

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

5 IN RE: NATIONAL : MDL NO. 2804
6 PRESCRIPTION OPIATE :
7 LITIGATION :

7 : CASE NO.
8 THIS DOCUMENT : 1:17-MD-2804
9 RELATES TO ALL CASES:

 : Hon. Dan A.
 : Polster

10 - - -

 Saturday, August 4, 2018

11 - - -

12 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
13 CONFIDENTIALITY REVIEW

14 - - -

15 Videotaped deposition of
16 DAVID MAY, taken pursuant to notice, was
17 held at the law offices of Reed Smith,
18 LLP, Three Logan Square, 1717 Arch
19 Street, Philadelphia, Pennsylvania 19103,
20 beginning at 9:01 a.m., on the above
21 date, before Amanda Dee Maslynsky-Miller,
22 a Certified Realtime Reporter.

19 - - -

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<p>1 APPEARANCES: (Continued) 2 VIA TELECONFERENCE: 3 4 ZUCKERMAN SPAEDER LLP 5 BY: VANESSA I. GARCIA, ESQUIRE 6 485 Madison Avenue 7 10th Floor 8 New York, New York 10022 9 (212) 704-9600 10 vgarcia@zuckerman.com 11 Representing the Defendant, 12 CVS Pharmacy 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>11 ALSO PRESENT: David Lane, Videographer Zac Hone, Trial Technician</p>	<p>1 - - - 2 E X H I B I T S 3 - - - 4 5 NO. DESCRIPTION PAGE 6 AmerisourceBergen-May 7 Exhibit-8 ABDCMDL 00158342 196 8 AmerisourceBergen-May 9 Exhibit-9 ABDCMDL 00216332-33 182 10 AmerisourceBergen-May 11 Exhibit-10 ABDCMDL 00159072 248 12 AmerisourceBergen-May 13 Exhibit-11 ABDCMDL 00140843-44 268 14 AmerisourceBergen-May 15 Exhibit-12 ABDCMDL 00159415-16 270 16 AmerisourceBergen-May 17 Exhibit-13 Tab Printout; 18 Sales Assignment 277 19 AmerisourceBergen-May 20 Exhibit-14 ABDCMDL 00002232 285 21 AmerisourceBergen-May 22 Exhibit-15 Tab Printout 314 23 AmerisourceBergen-May 24 Exhibit-16 ABDCMDL 00156364 320 AmerisourceBergen-May Exhibit-17 Tab Printout 322 AmerisourceBergen-May Exhibit-18 Tab Printout 322</p>

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2 (It is hereby stipulated and

3 agreed by and among counsel that

4 sealing, filing and certification

5 are waived; and that all

6 objections, except as to the form

7 of the question, will be reserved

8 until the time of trial.)

9 - - -

10 VIDEO TECHNICIAN: We are

11 now on the record. My name is

12 David Lane, videographer for

13 Golkow Litigation Services.

14 Today's date is August 4th, 2018.

15 Our time is 9:01 a.m.

16 This deposition is taking

17 place in Philadelphia,

18 Pennsylvania, in the matter of

19 National Prescription Opiate

20 Litigation. Our deponent today is

21 David May.

22 Our counsel will be noted on

23 the stenographic record. The

24 court reporter today is Amanda

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1 Miller and will now swear in our

2 witness.

3 - - -

4 DAVID MAY, after having been

5 duly sworn, was examined and

6 testified as follows:

7 - - -

8 VIDEO TECHNICIAN: Please

9 begin.

10 - - -

11 EXAMINATION

12 - - -

13 BY MR. PIFKO:

14 Q. Good morning, Mr. May.

15 A. Good morning.

16 Q. My name is Mark Pifko. I'm

17 an attorney for the plaintiffs in this

18 matter. I'm handing you what's marked as

19 Exhibit Number 1.

20 - - -

21 (Whereupon,

22 AmerisourceBergen-May Exhibit-1,

23 ABDCMDL 151803-804, was marked for

24 identification.)

<p style="text-align: right;">Page 14</p> <p>1 - - -</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. This is an e-mail, Bates</p> <p>4 labeled ABDCMDL 151803 through 804.</p> <p>5 There's various exchanges;</p> <p>6 you're one of the people on the</p> <p>7 exchanges. They are dated January 14th,</p> <p>8 2016.</p> <p>9 Please take a minute to</p> <p>10 review that and let me know when you're</p> <p>11 done.</p> <p>12 A. Sure. Thank you.</p> <p>13 Q. Have you seen this before?</p> <p>14 A. I have.</p> <p>15 Q. When was the last time you</p> <p>16 saw this?</p> <p>17 A. It would have been on the</p> <p>18 date that is indicated by the e-mail,</p> <p>19 which would be, I guess, January 14th,</p> <p>20 2016.</p> <p>21 Q. Do you recall this</p> <p>22 discussion?</p> <p>23 A. I recall this exchange, yes.</p> <p>24 Q. Is this a true and correct</p>	<p style="text-align: right;">Page 16</p> <p>1 order as suspicious, it's</p> <p>2 permanently rejected and never</p> <p>3 shipped.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. So if you -- it's based on</p> <p>6 your understanding of the legal</p> <p>7 requirements that if you identify an</p> <p>8 order as suspicious, you cannot ship it,</p> <p>9 correct?</p> <p>10 MR. NICHOLAS: Object to the</p> <p>11 form.</p> <p>12 THE WITNESS: It's my</p> <p>13 understanding of the law and the</p> <p>14 regulation and the expectation of</p> <p>15 the regulator.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. To be clear, that if an</p> <p>18 order is suspicious, you cannot ship it,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Do you know what these</p> <p>22 direct shipments are?</p> <p>23 A. I have some knowledge of the</p> <p>24 direct shipments.</p>
<p style="text-align: right;">Page 15</p> <p>1 copy of the communications reflected</p> <p>2 here?</p> <p>3 A. Yes, it is.</p> <p>4 Q. I'd like to direct your</p> <p>5 attention to the first page. About</p> <p>6 halfway down the page, there's an e-mail</p> <p>7 from you. It says, 3:16 p.m. to Sharon</p> <p>8 Hartman.</p> <p>9 Do you see that part?</p> <p>10 A. I do.</p> <p>11 Q. There's a line you say right</p> <p>12 there, If an order is deemed suspicious,</p> <p>13 it can never be shipped.</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Why do you say that?</p> <p>17 MR. NICHOLAS: Object to the</p> <p>18 form.</p> <p>19 Go ahead.</p> <p>20 THE WITNESS: Under our</p> <p>21 program and our policy and our</p> <p>22 understanding of the regulation,</p> <p>23 and what the regulator expects</p> <p>24 from us, is when we declare an</p>	<p style="text-align: right;">Page 17</p> <p>1 In reading the back -- or,</p> <p>2 actually, the beginning of the e-mail</p> <p>3 chain, there is a refresher on here that</p> <p>4 explains what direct ships are.</p> <p>5 Q. This is a situation where</p> <p>6 the order goes through</p> <p>7 AmerisourceBergen's order process but</p> <p>8 it's shipped directly from the</p> <p>9 manufacturer to the customer, correct?</p> <p>10 A. Actually, my understanding</p> <p>11 of the direct ship is an order is placed</p> <p>12 by the customer directly to the</p> <p>13 manufacturer, AmerisourceBergen has no</p> <p>14 visibility to the placement of that</p> <p>15 order.</p> <p>16 The order is then shipped</p> <p>17 from the manufacturer directly to the</p> <p>18 customer, and we have no visibility of</p> <p>19 that process.</p> <p>20 What we do have visibility</p> <p>21 into is the financial transaction after</p> <p>22 it's completed. And our role in the</p> <p>23 process is simply billing the</p> <p>24 transaction.</p>

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¹ quantities.

2 Q. Right. So that tells you
3 about the pharmacy's dispensing of all
4 products, irrespective of the distributor
5 from whom they obtained those products,
6 correct?

7 MR. NICHOLAS: Object to the
8 form.

9 THE WITNESS: That's
10 correct.

¹¹ BY MR. PIFKO:

12 Q. So by obtaining a
13 utilization report, AmerisourceBergen can
14 see all the activity for the period in
15 the report, regardless of who sold the
16 customer the product, correct?

17 MR. NICHOLAS: Object to the
18 form.

19 THE WITNESS: Utilization
20 reports would give us visibility
21 to all of the products that the
22 pharmacy provides sales data for.

23 BY MR. PIFKO:

24 Q. And what do you mean all of

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Page 21

1 the products for the -- that the pharmacy
2 provides sales data for?

3 A. Pharmacies have different
4 recordkeeping systems and -- that are
5 diverse. And so if we ask for a
6 utilization report, we accept what the
7 pharmacy gives us as the utilization
8 report, that it accurately represents all
9 of what is being dispensed from the
10 pharmacy.

11 Q. But when you make the
12 request, you request all of their
13 activity, you're not just requesting some
14 portion of it?

15 MR. NICHOLAS: Object to the
16 form.

17 THE WITNESS: When we make
18 the request, we request a
19 utilization report.

20 BY MR. PIFKO:

21 Q. The pharmacy is obligated to
22 provide the utilization report to you
23 upon request?

24 MR. NICHOLAS: Object to the

14 BY MR. PIFKO:

15 Q. Have you heard of the term
16 "utilization report"?

17 A. I have.

18 Q. What's a utilization report?

19 A. So a utilization report is a
20 report that we would request from a
21 pharmacy customer. And that utilization
22 report would contain summary data from
23 the pharmacy about all of that pharmacy's
24 dispensing, in terms of products and

<p style="text-align: right;">Page 22</p> <p>1 form.</p> <p>2 THE WITNESS: The pharmacy</p> <p>3 is not obligated.</p> <p>4 BY MR. PIFKO:</p> <p>5 Q. They're not obligated?</p> <p>6 A. They're not.</p> <p>7 Q. Do you have a contractual</p> <p>8 ability to require them to do so?</p> <p>9 MR. NICHOLAS: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: I'm probably</p> <p>12 not the best person to respond</p> <p>13 relative to the contractual</p> <p>14 relationships we establish with</p> <p>15 our customers.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. Do you have familiarity with</p> <p>18 the company's practice of obtaining</p> <p>19 utilization reports from pharmacy</p> <p>20 customers?</p> <p>21 A. Yes.</p> <p>22 Q. Is that a normal part of</p> <p>23 AmerisourceBergen's process, to obtain</p> <p>24 those reports?</p>	<p style="text-align: right;">Page 24</p> <p>1 we're talking about the period</p> <p>2 from 2015 forward; is that</p> <p>3 correct?</p> <p>4 MR. PIFKO: I'll get into</p> <p>5 some dates. I'm going to ask him.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. What is --</p> <p>8 MR. NICHOLAS: I know. But</p> <p>9 I just want to make sure the</p> <p>10 testimony --</p> <p>11 MR. PIFKO: The record is it</p> <p>12 is. You can't go back, he's</p> <p>13 already answered the question.</p> <p>14 MR. NICHOLAS: It's unclear</p> <p>15 and that's why I'm trying to</p> <p>16 clarify.</p> <p>17 MR. PIFKO: Well, it is what</p> <p>18 it is. We can't fix it</p> <p>19 retroactively.</p> <p>20 MR. NICHOLAS: Sure we can.</p> <p>21 MR. PIFKO: No, we can't.</p> <p>22 MR. NICHOLAS: You don't</p> <p>23 want to.</p> <p>24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 23</p> <p>1 A. No.</p> <p>2 Q. What are occasions that give</p> <p>3 rise to requesting a utilization report?</p> <p>4 A. So to clarify a little bit</p> <p>5 on this, I think we may be talking about</p> <p>6 a couple of different things here.</p> <p>7 We request, when I say "we,"</p> <p>8 the diversion control team, we request</p> <p>9 dispensing data from the pharmacy as</p> <p>10 opposed to utilization report, from time</p> <p>11 to time as needed.</p> <p>12 Dispensing data reveals</p> <p>13 different information than what a</p> <p>14 utilization report would reveal. And</p> <p>15 that's why we request dispensing data</p> <p>16 reports versus utilization data reports.</p> <p>17 Not to say that we've never</p> <p>18 requested utilization reports, but if</p> <p>19 we're involved in a due diligence</p> <p>20 investigation of a customer, we would</p> <p>21 request dispensing data reports.</p> <p>22 MR. NICHOLAS: Before we go</p> <p>23 on, I just want to make clear for</p> <p>24 the record that -- or confirm that</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. So what is a dispensing</p> <p>2 report?</p> <p>3 MR. NICHOLAS: Objection.</p> <p>4 Please clarify what period of time</p> <p>5 we're going to be talking about as</p> <p>6 we go forward.</p> <p>7 THE WITNESS: So a</p> <p>8 dispensing report is a report</p> <p>9 furnished by the pharmacy. And we</p> <p>10 ask for that report in a specific</p> <p>11 format, which we provide to the</p> <p>12 pharmacy. And it gives us patient</p> <p>13 de-identified data relative to all</p> <p>14 of the dispensing that takes place</p> <p>15 at the pharmacy of controlled</p> <p>16 substances.</p> <p>17 And, typically, we would</p> <p>18 request that data for a period of</p> <p>19 90 days.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. You understand that you're</p> <p>22 designated to be the company's</p> <p>23 representative to testify about certain</p> <p>24 topics today, correct?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. I do.</p> <p>2 Q. And there's a time period</p> <p>3 for which you're designated to provide</p> <p>4 company testimony, correct?</p> <p>5 A. Yes.</p> <p>6 Q. And that's 2015 to what?</p> <p>7 A. The present.</p> <p>8 Q. Okay. So with respect to</p> <p>9 the time period for which you're</p> <p>10 designated to provide company testimony,</p> <p>11 can you tell me what the occasions are</p> <p>12 where you would request a dispensing</p> <p>13 report from a pharmacy customer?</p> <p>14 A. There may be three time</p> <p>15 periods where we would request that, or</p> <p>16 three situations.</p> <p>17 The first would be, and most</p> <p>18 importantly and, actually, most commonly,</p> <p>19 is if we were involved in a due diligence</p> <p>20 investigation of a pharmacy customer</p> <p>21 where we saw certain red flags through</p> <p>22 some of the analytics that we run. It</p> <p>23 may cause us to intervene with a customer</p> <p>24 to mitigate those red flags.</p>	<p style="text-align: right;">Page 28</p> <p>1 customer requests changes to established</p> <p>2 parameters within the program, and if the</p> <p>3 drug family that is the focus of that</p> <p>4 consumption review is a Schedule II drug,</p> <p>5 then we would ask that the customer</p> <p>6 furnish, in addition to the request</p> <p>7 itself, dispensing data for a period of</p> <p>8 90 days.</p> <p>9 Those would be the</p> <p>10 situations.</p> <p>11 Q. I'm asking you this in your</p> <p>12 individual capacity now.</p> <p>13 You understand that you're</p> <p>14 also called for a deposition today as an</p> <p>15 individual as well as to provide</p> <p>16 testimony for the company? Do you</p> <p>17 understand that?</p> <p>18 A. I do.</p> <p>19 Q. I'm asking you this specific</p> <p>20 question as an individual.</p> <p>21 Do you have knowledge as to</p> <p>22 whether the company obtained -- I just</p> <p>23 forgot the word that we're using -- the</p> <p>24 dispensing reports, do you have knowledge</p>
<p style="text-align: right;">Page 27</p> <p>1 And during that process, we</p> <p>2 may, during this process, if we feel it's</p> <p>3 necessary, if we feel it would help to</p> <p>4 mitigate the red flags, we may request</p> <p>5 that dispensing data for that exercise.</p> <p>6 Also during that period of</p> <p>7 time, if a customer was being onboarded,</p> <p>8 taking on a new customer, and if it's an</p> <p>9 existing pharmacy that's switching</p> <p>10 suppliers and that customer wanted to</p> <p>11 furnish us with data that would allow us</p> <p>12 to properly set the size of the customer</p> <p>13 within our order monitoring program, they</p> <p>14 can send us verifiable data.</p> <p>15 Well, that verifiable data</p> <p>16 could be previous consumption data from</p> <p>17 their former supplier or it could be</p> <p>18 dispensing data. So that would be</p> <p>19 another occasion where it would be</p> <p>20 collected, generally speaking.</p> <p>21 A third occasion would be</p> <p>22 when we conduct a consumption review for</p> <p>23 a customer. So within the operation of</p> <p>24 our order monitoring program, if a</p>	<p style="text-align: right;">Page 29</p> <p>1 as to whether the company obtained</p> <p>2 dispensing reports prior to 2015?</p> <p>3 A. The company may have</p> <p>4 collected dispensing reports. To the</p> <p>5 best of my recollection, I remember</p> <p>6 instances of reviewing prior materials</p> <p>7 where it may have been collected.</p> <p>8 Q. Do you know how far back the</p> <p>9 company may have collected dispensing</p> <p>10 reports?</p> <p>11 A. I can't say specifically.</p> <p>12 Q. When you joined the company,</p> <p>13 you took it upon yourself to familiarize</p> <p>14 yourself with certain past practices of</p> <p>15 the company?</p> <p>16 A. I did.</p> <p>17 Q. I'm handing you now what was</p> <p>18 marked yesterday as Exhibit Zimmerman-1.</p> <p>19 It is a copy of the first</p> <p>20 30(b)(6) notice in this case to</p> <p>21 AmerisourceBergen. Take a minute to</p> <p>22 review that and let me know when you're</p> <p>23 ready to discuss it.</p> <p>24 I just have a couple of</p>

<p style="text-align: right;">Page 30</p> <p>1 simple questions, but take your time. 2 MR. NICHOLAS: While he's 3 looking at the document, just to 4 clarify the record, Mr. May is 5 designated as a 30(b)(6) witness 6 to testify through May 29th of 7 2018. 8 THE WITNESS: Okay. 9 BY MR. PIFKO: 10 Q. Okay. If you'd go to Page 11 6. Tell me when you're there. 12 A. Yes, I'm there. 13 Q. It's got some letters, A, 14 and it continues on through the next 15 page, A through O. 16 A. Yes. 17 Q. Have you reviewed these 18 topics? 19 A. I have. 20 Q. When was the first time that 21 you saw these topics? 22 A. They were presented to me by 23 counsel. 24 Q. When was the first time?</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Did you undertake any effort 2 to familiarize yourself with the topics 3 in O? 4 A. I have not. 5 Q. But you are prepared to talk 6 about A through N today, from the time 7 period from January 1st, 2015 to May 8 29th, 2018? 9 A. I am. 10 Q. You were a DEA employee for 11 some period of time, correct? 12 A. Yes. 13 Q. How long did you work for 14 the DEA? 15 A. I started working for DEA 16 while I was in college, so over 30 years. 17 Q. What -- when did you first 18 start? What was the date when you first 19 started working for the DEA? 20 A. It was approximately June of 21 1982, as a student intern. And I started 22 my career as an agent in 1985, and was 23 employed as an agent until I retired in 24 2014.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. Oh, when? Three weeks ago, 2 possibly, approximately. 3 Q. And do you understand that 4 you're designated to speak on all of 5 these topics from January 1st, 2015 to 6 May 29th, 2018? 7 MR. NICHOLAS: We covered 8 yesterday that that's with the 9 exception of letter O. 10 THE WITNESS: Yes. 11 BY MR. PIFKO: 12 Q. With the exception of letter 13 O, you're not here to testify about that? 14 MR. NICHOLAS: Well, we've 15 agreed that he's not here to 16 testify about that. 17 MR. PIFKO: I'm asking the 18 witness. 19 MR. NICHOLAS: Then I'll 20 object to the question. 21 THE WITNESS: Well, 22 apparently there's an agreement, 23 so I won't be talking about O. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. When you retired in 2014, 2 what was the position you held at the 3 DEA? 4 A. I was the assistant special 5 agent in charge of the Atlanta field 6 division. 7 Q. Was that the highest 8 position that you held when you were at 9 the DEA? 10 A. I had an equivalent grade 11 but with a different title, assistant 12 regional director in Europe, Africa and 13 the Middle East. I also had a temporary 14 grade at the same level while assigned to 15 DEA headquarters as an acting section 16 chief of our Europe and Middle Eastern 17 section. 18 Q. When were you acting section 19 chief? 20 A. It was during my assignment 21 to DEA headquarters. So that would have 22 been upon my return from Paris. I have 23 to sort the years out. 24 So '86 to '91, I was</p>

<p style="text-align: right;">Page 34</p> <p>1 assigned to the New York field division; 2 from '91 to '93, I was assigned to the 3 Marseilles resident office in France; 4 from '93 to '96, I was assigned to the 5 Paris country office. From 1996 to 1999, 6 I was assigned to DEA headquarters, that 7 was the acting section chief; from 1999 8 to 2002, I was handed a program, a 9 congressionally funded program, targeting 10 drug trafficking organizations across the 11 country. That ended in 2002, where I 12 became the head of the drug task force in 13 the city of Charlotte, North Carolina. 14 From that, I was assigned Rome, as 15 assistant regional director. And then 16 finally to Atlanta. 17 Q. And after concluding your 18 employment with the DEA in 2014, you then 19 went to join AmerisourceBergen, correct? 20 A. Correct. 21 Q. And what was your title when 22 you joined AmerisourceBergen? 23 A. Senior director of diversion 24 control.</p>	<p style="text-align: right;">Page 36</p> <p>1 specifically say that they will 2 not approve any specific programs 3 being run by regulators. 4 BY MR. PIFKO: 5 Q. And what do you mean by 6 that? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: In terms of 10 the -- 11 MR. NICHOLAS: And to the 12 scope. 13 Go ahead. 14 THE WITNESS: In terms of 15 the context to your question, I've 16 seen written documents by DEA, 17 including in their guidance 18 letters around the 2006, 2007 time 19 frame, where they say that they 20 will not approve specific systems 21 or programs that regulators have 22 in place. 23 That's my only context for 24 that question.</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. What's your title now? 2 A. Vice president of diversion 3 control and security. 4 Q. Did you have any positions 5 in between those two positions? 6 A. I did not. 7 Q. Were your job 8 responsibilities essentially the same in 9 those two positions? 10 A. They are slightly different. 11 Q. What are the differences? 12 A. I assumed the security and 13 investigations profile in addition to the 14 diversion control profile within 15 corporate security and regulatory 16 affairs. 17 Q. Based on your experience 18 with the DEA, does the DEA tell companies 19 it regulates whether their practices are 20 in compliance with the law? 21 MR. NICHOLAS: Object to the 22 form. Object to the scope. 23 THE WITNESS: I have seen 24 statements by DEA where they</p>	<p style="text-align: right;">Page 37</p> <p>1 BY MR. PIFKO: 2 Q. You said that they won't 3 approve specific systems or programs that 4 regulators have in place. 5 Do you mean that the 6 regulated have in place? 7 A. I do. 8 Q. So what you're saying is the 9 DEA does not approve the specific system 10 or program that a company may implement 11 in connection with regulations that DEA 12 enforces, correct? 13 MR. NICHOLAS: Object to the 14 form. Object to the scope. 15 You're outside of the witness's 16 time frame here, by a lot. 17 THE WITNESS: Again, the 18 only context I can put around this 19 is my review of documents from DEA 20 where -- and I will rely upon what 21 the document says, in terms of 22 what my understanding is, that 23 DEA -- DEA's position around this 24 issue.</p>

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1 BY MR. PIFKO:
2 Q. Okay. And what is your
3 understanding about what DEA's position
4 is?
5 MR. NICHOLAS: Object to the
6 form. Object to the scope. Same
7 objections.
8 THE WITNESS: Again, I would
9 rely upon the content of that
10 written guidance specifically that
11 DEA has in those documents that
12 they released; it was either 2006
13 or 2007. I believe it was
14 actually a 2007 document, where
15 they make a statement relative to
16 their not approving specific
17 programs of the regulated
18 community.
19 BY MR. PIFKO:
20 Q. In your experience as a DEA
21 agent for -- how many years?
22 A. Approximately 30.
23 Q. -- for 30 years, did you
24 ever tell a company, or somebody that was

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1 within your regulatory authority, that
2 what they were doing was approved?
3 MR. NICHOLAS: Object to the
4 form. Object to the scope.
5 THE WITNESS: So the
6 majority of my career, almost all
7 of my career, was on the
8 enforcement side of the agency.
9 And I had little to no interaction
10 with the regulated community.
11 BY MR. PIFKO:
12 Q. You were out there chasing
13 drug dealers?
14 A. I was out there
15 investigating drug trafficking
16 organizations, yes.
17 - - -
18 (Whereupon,
19 AmerisourceBergen-May Exhibit-2,
20 Masters Pharmaceutical Versus DEA
21 Court Opinion, 861 F.3d 206, 2017
22 from the DC Circuit, was marked
23 for identification.)
24 - - -

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1 BY MR. PIFKO:
2 Q. I'm handing you what's
3 marked as Exhibit-2.
4 MR. PIFKO: He's going to
5 hand it to you in just a second.
6 For the record, it's a copy
7 of the Masters Pharmaceutical
8 versus DEA court opinion, 861 F.3d
9 206, 2017, from the DC circuit.
10 BY MR. PIFKO:
11 Q. It's got a couple paragraphs
12 highlighted that we wanted to call your
13 attention to. But take a minute to
14 review it.
15 Just, my first question
16 would just be that, have you seen this
17 opinion before?
18 MR. NICHOLAS: Can I just --
19 what we're looking at on the
20 screen is not the same as what's
21 in front of him.
22 MR. PIFKO: It should be.
23 MR. NICHOLAS: It looks like
24 a different document.

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1 MR. PIFKO: Let's go off the
2 record while we fix this.
3 VIDEO TECHNICIAN: Going off
4 the record. 9:33 a.m.
5 - - -
6 (Whereupon, a discussion off
7 the record occurred.)
8 - - -
9 VIDEO TECHNICIAN: We're
10 back on record. The time is 9:35
11 a.m.
12 BY MR. PIFKO:
13 Q. Okay, Mr. May, we've
14 resolved, and it appears that you have a
15 complete copy of the Masters
16 Pharmaceutical decision in front of you.
17 Please take a moment to
18 review it and let me know when you're
19 done.
20 My first question is just if
21 you've seen this before?
22 A. Yes, I've seen this before.
23 Q. When was the first time you
24 saw this?

<p style="text-align: right;">Page 42</p> <p>1 A. I've seen it recently in 2 preparation for today. And I may have 3 seen it at other times during the course 4 of my work, but I don't recall 5 specifically when that was. 6 Q. Okay. I'd like to direct 7 you to Page 7, if you use the very bottom 8 of the page. There's a paragraph with a 9 bracketed 2 there. 10 Do you see that paragraph at 11 the bottom on the right? 12 A. I do. 13 Q. If you go a little bit down 14 it says -- there's a sentence that says, 15 The security requirement. 16 Do you see that part? 17 A. I do. 18 Q. I'm going to read that to 19 you. 20 The security requirement, in 21 quotes, at the heart of this case 22 mandates that distributors, quote, design 23 and operate a system to identify 24 suspicious orders of controlled</p>	<p style="text-align: right;">Page 44</p> <p>1 diversion control at the company, you're 2 responsible for the company's diversion 3 control efforts? 4 A. I am. 5 Q. Do you understand that 6 the -- in discharging your duties, that 7 the company is bound by the law as set 8 forth in this decision? 9 MR. NICHOLAS: Object to the 10 form. 11 THE WITNESS: I understand 12 in my role and my responsibility 13 is one to meet the requirements of 14 The Controlled Substances Act in 15 implementing regulations that are 16 relevant to the wholesale 17 distributor. And I rely upon 18 those, as opposed to this 19 particular case. 20 BY MR. PIFKO: 21 Q. But you took it upon 22 yourself, in connection with your role as 23 the head of the diversion control 24 division of the company, to familiarize</p>
<p style="text-align: right;">Page 43</p> <p>1 substances and report those orders to DEA 2 (the reporting requirement) 21CFR Section 3 1301.74(b). 4 Do you see that? 5 A. I do. 6 Q. Do you understand that 7 AmerisourceBergen is bound by the 8 reporting requirement? 9 MR. NICHOLAS: Object to the 10 form. 11 THE WITNESS: So I 12 understand that AmerisourceBergen, 13 as a wholesale distributor, 14 registered as a wholesale 15 distributor, is bound by certain 16 provisions of The Controlled 17 Substances Act, as well as the 18 implementing regulations. 19 And so in terms of any 20 requirements imposed upon us, I 21 would refer to the CFR as well as 22 The Controlled Substance Act. 23 BY MR. PIFKO: 24 Q. As the vice president of</p>	<p style="text-align: right;">Page 45</p> <p>1 yourself with this case when it came out? 2 MR. NICHOLAS: Object to the 3 form. 4 THE WITNESS: At one point I 5 reviewed this document, and more 6 recently I reviewed it again. 7 - - - 8 (Whereupon, 9 AmerisourceBergen-May Exhibit-3 10 ABDCMDL 00156582-84, was marked 11 for identification.) 12 - - - 13 BY MR. PIFKO: 14 Q. I'm handing you what has 15 been marked as Exhibit-3. Please take a 16 minute to look at this and let me know 17 when you're done. 18 For the record, it's some 19 e-mails, dated August 2nd, 2017. It's 20 Bates labeled ABDCMDL 00156582 through 21 84. 22 A. Okay. 23 Q. Are you familiar with this 24 document?</p>

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1 A. I am.
2 Q. Is this a true and correct
3 copy of the discussion reflected in this
4 document?
5 A. Yes, it is.
6 Q. The first e-mail at the
7 bottom is dated July 13th -- sorry, to be
8 clear, so you know where I'm talking,
9 it's on the 156583. It's an e-mail from
10 you to Ruth Miller and Kristin Freitas,
11 dated July 13, 2017.
12 Do you see that?
13 A. I do.
14 Q. The subject of the -- the
15 substance. The e-mail is on the next
16 page, but do you see the header on the
17 page I just referenced?
18 A. Yes.
19 Q. Looking back to Exhibit-2,
20 the Masters decision, you see that on the
21 first page it was decided on June 30th,
22 2017.
23 Do you agree?
24 A. I'm sorry. You just lost

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1 me.
2 Q. Go back to Exhibit-2, the
3 decision.
4 A. Yes. Thank you.
5 Q. You see that it was
6 decided -- on the first page on the left,
7 it was decided June 30th, 2017. Agreed?
8 A. I see that. Thank you.
9 Q. And so you write to Ruth
10 Miller and Christine Freitas or Kristin
11 Freitas about two weeks later, agree?
12 A. Yes.
13 Q. And you say, Ruth, Kristin,
14 sorry I could not be on the RAC call
15 today, as I was traveling.
16 RAC is regulatory affairs
17 committee, correct?
18 A. I'm not precisely certain
19 what it stands for.
20 Q. That's a committee that you
21 serve on?
22 A. I don't actually serve on
23 this committee.
24 Q. It's an ad hoc committee?

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1 A. I'm familiar with the term.
2 I just don't know precisely what -- the
3 initials.
4 Q. But that's a committee
5 that's affiliated with the Healthcare
6 Distribution Alliance, correct?
7 A. Yes, yes.
8 Q. And you have some
9 involvement in interacting with the
10 Healthcare Distribution Alliance?
11 A. I do.
12 Q. Okay. Going back to this
13 e-mail, you say, I have been meaning to
14 reach out to you, as I am concerned with
15 some of the language and reasoning found
16 in the appellate court's recent decision
17 in the Masters case, particularly
18 surrounding suspicious orders.
19 Do you see that?
20 A. I do.
21 Q. What were your concerns
22 about the appellate court's recent
23 decision in the Masters case with respect
24 to suspicious orders?

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1 A. To the best of my
2 recollection, without seeing any other
3 documents, other than what's in front of
4 me here, there was information that was
5 new information in the appellate court
6 decision.
7 There was some terminology
8 which I had never seen before in any of
9 the regulations or in The Controlled
10 Substance Act. And that caused me to be
11 concerned that there was this new
12 language that wasn't in the law or
13 regulation. And that was a general
14 description of my concern.
15 Q. What language was that?
16 A. There was language relative
17 to shipping requirement. And I had never
18 seen the term, in all of my work at ABC,
19 up until that point in my review of the
20 regulation and the law, anything about
21 shipping requirement.
22 So that would be just an
23 example. There may have been other
24 concerns that I had.

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1 Q. And it was your concern
2 because you had never seen the phrase
3 "shipping requirement"?

4 MR. NICHOLAS: Object to the
5 form. Asked and answered.

6 THE WITNESS: My concern was
7 that I had never seen the term
8 "shipping requirement" in the
9 applicable regulations or the law.
10 And that its first appearance that
11 I recall seeing was in the
12 decision.

13 BY MR. PIFKO:

14 Q. I'm going to hand you
15 another document that was marked
16 yesterday Exhibit-6.

17 For the record, it's a
18 series of letters from the Department of
19 Justice, DEA administration, which we
20 call the Dear Registrant letters.

21 Take a minute to review
22 those.

23 MR. NICHOLAS: While he's
24 reviewing them, just so the record

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1 is clear, since you're about to
2 ask him about documents that
3 precede the period for which he is
4 designated to testify as a
5 30(b)(6) witness, he is now
6 testifying in his individual
7 capacity.

8 MR. PIFKO: We have to make
9 that judgment based on the
10 question. But your position is
11 noted.

12 BY MR. PIFKO:

13 Q. Are you familiar with these
14 letters?

15 A. I am.

16 Q. If I call them the Dear
17 Registrant letters, is that a term that
18 you're familiar with?

19 A. Yes.

20 Q. Okay. When was the first
21 time that you've seen these letters?

22 A. I'm not precisely sure I
23 could provide you a date. It's been some
24 time.

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1 Q. Did you review these letters
2 upon joining AmerisourceBergen?

3 A. Yes.

4 Q. And that was part of your
5 effort to familiarize yourself with
6 activity governing the diversion control
7 department for which you were
8 responsible?

9 MR. NICHOLAS: Object to the
10 form.

11 THE WITNESS: Yes.

12 BY MR. PIFKO:

13 Q. So there's four letters in
14 this packet. I want to turn your
15 attention to the earliest of these
16 letters, dated September 27th, 2006.

17 For the record, that letter
18 covers ABDCMDL 00269691 through 694.

19 Tell me when you're there.

20 A. I'm there, yes.

21 Q. Are you familiar with this
22 letter?

23 A. Yes.

24 Q. Let's turn to the second

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1 page of this letter.

2 About two-thirds of the way
3 down it says, Thus, in addition to
4 reporting all suspicious orders, a
5 distributor has a statutory
6 responsibility to exercise due diligence
7 to avoid filling suspicious orders that
8 might be diverted into other than
9 legitimate medical, scientific and
10 industrial channels.

11 Do you see that?

12 A. I do.

13 Q. Failure to exercise such due
14 diligence could, as circumstances
15 warrant, provide a statutory basis for
16 revocation or suspension of a
17 distributor's registration.

18 Do you see that?

19 MR. NICHOLAS: Is that a
20 question?

21 THE WITNESS: I do see it,
22 yes.

23 BY MR. PIFKO:

24 Q. Do you have an understanding

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1 that that is saying, if you identify an
2 order as suspicious, you should not ship
3 it?

4 MR. NICHOLAS: Object to the
5 form. In addition to which the
6 witness is being asked about a
7 topic for which he has not been
8 designated as a 30(b)(6) deponent.
9 So I'll permit him to
10 answer, but he's only answering in
11 his individual capacity.
12 THE WITNESS: Could you
13 repeat your question?
14 BY MR. PIFKO:
15 Q. The sentence I just read --
16 A. Yes.
17 Q. -- my question is, do you
18 understand this to be saying that if you
19 identify an order as suspicious, you
20 cannot ship it?
21 MR. NICHOLAS: Same
22 objection.
23 THE WITNESS: So in current
24 state, under our program, if we

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1 identify an order as suspicious,
2 we don't ship. It's rejected,
3 it's not shipped and it's reported
4 to DEA.
5 BY MR. PIFKO:
6 Q. Okay. I didn't ask you
7 about what your program was. I'm asking
8 you about this letter right now.
9 And my question is, do you
10 understand this language here to be
11 saying that if an order is deemed to be
12 suspicious, it cannot be shipped?
13 MR. NICHOLAS: Same
14 objection.
15 THE WITNESS: And, again, I
16 view these letters not as I view
17 the law and the regulation. It's
18 additional information that's
19 provided by DEA.
20 My understanding of the law
21 and regulation says that if we
22 identify an order as suspicious,
23 we should reject it and report it.
24 That's what we do at

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1 AmerisourceBergen.
2 BY MR. PIFKO:
3 Q. And I just want to know if,
4 when you see this language, you
5 understand that that's what this language
6 is saying? It's saying, if you identify
7 an order as suspicious, do not ship it.
8 MR. NICHOLAS: Object to the
9 form. Same objection. Third time
10 you've asked him.
11 THE WITNESS: The law and
12 the regulation requires us to
13 reject or report suspicious
14 orders. They are, thereby, not
15 shipped.
16 If this says the same thing,
17 that -- and it agrees with the law
18 and the regulation, then I would
19 let the document stand on its own.
20 BY MR. PIFKO:
21 Q. That's your understanding of
22 the document?
23 MR. NICHOLAS: Object to the
24 form. He's answered the question

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1 four times.
2 MR. PIFKO: It's been asked.
3 It hasn't been answered.
4 MR. NICHOLAS: No, it has
5 been answered.
6 BY MR. PIFKO:
7 Q. I'm just trying to get --
8 sir, I'm just trying to get your
9 understanding of the document. I
10 appreciate your explanation of the law.
11 I'm just trying to get --
12 when you read this sentence, do you agree
13 that that's what it says? That's all I'm
14 asking you.
15 MR. NICHOLAS: Object to the
16 form. Object to the repeated
17 question, since he's answered it.
18 THE WITNESS: And, again, my
19 response would be the same.
20 That I rely on the
21 regulation and the law in terms of
22 how we carry out our
23 responsibility relative to
24 suspicious orders. And at

<p style="text-align: right;">Page 58</p> <p>1 AmerisourceBergen, when we 2 identify a suspicious order, it's 3 rejected and reported to DEA. 4 BY MR. PIFKO: 5 Q. When you read this 6 sentence -- can you read this sentence to 7 me out loud, please? 8 A. Sure. 9 Q. I mean, that paragraph. 10 A. Sure. 11 MR. NICHOLAS: Can I have 12 the question repeated, please? 13 I'm sorry. 14 MR. PIFKO: I just asked him 15 to read the paragraph aloud. 16 MR. NICHOLAS: Okay. You 17 want him to read it out loud. 18 Go ahead. 19 THE WITNESS: Thus, in 20 addition to reporting all 21 suspicious orders, a distributor 22 has a statutory responsibility to 23 exercise due diligence to avoid 24 filling suspicious orders that</p>	<p style="text-align: right;">Page 60</p> <p>1 what this means? 2 MR. NICHOLAS: Object to the 3 form. 4 THE WITNESS: Again, in 5 terms of suspicious orders, my 6 understanding of the law and 7 regulation requires us to reject 8 them, cancel them, and report them 9 to DEA. 10 BY MR. PIFKO: 11 Q. And that's what this is 12 saying here, correct? 13 MR. NICHOLAS: Object to the 14 form. The witness has answered 15 this a number of times. Now 16 you're just trying to put words in 17 his mouth. So I'll object. 18 THE WITNESS: Again, I rely 19 on the law and the regulation 20 relative to suspicious orders. 21 MR. PIFKO: The record will 22 reflect that the witness is 23 unwilling to answer my question. 24 MR. NICHOLAS: Let the</p>
<p style="text-align: right;">Page 59</p> <p>1 might be diverted into other than 2 legitimate, medical, scientific 3 and industrial channels. Failure 4 to exercise such due diligence 5 could, as circumstances warrant, 6 provide a statutory basis for 7 revocation or suspension of a 8 distributor's registration. 9 BY MR. PIFKO: 10 Q. What does that mean to you? 11 MR. NICHOLAS: Object to the 12 form. Asked and answered five 13 times. Outside the scope. 14 THE WITNESS: Again, I 15 don't -- I don't think I'm the 16 right person to try to interpret 17 what the meaning is of this 18 sentence that was written by 19 somebody else. 20 And I would rely upon my 21 previous answer relative to 22 suspicious orders. 23 BY MR. PIFKO: 24 Q. You're unable to tell me</p>	<p style="text-align: right;">Page 61</p> <p>1 record reflect that the witness 2 has answered the question. And 3 the commentary about it is totally 4 inappropriate. 5 BY MR. PIFKO: 6 Q. Staying on this document, I 7 want to direct your attention to the 8 letter dated December 27th, 2007. That's 9 ABDCMDL 00269685. 10 Are you there? 11 A. Yes. 12 Q. Second paragraph, at the 13 bottom, it says, Accordingly, DEA does 14 not approve or otherwise endorse any 15 specific system for reporting suspicious 16 orders. Past communications with DEA, 17 whether implicit or explicit, that could 18 be construed as approval of a particular 19 system for reporting suspicious orders 20 should no longer be taken to mean that 21 DEA approves a specific system. 22 Do you see that? 23 A. I do. 24 Q. When I asked you earlier</p>

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1 about DEA approving conduct by regulated
2 entities, is that what you were referring
3 to?
4 A. Yes.
5 Q. And that's consistent with
6 your understanding of the DEA's policy?
7 MR. NICHOLAS: Object to the
8 form. Outside the scope. He's
9 testifying as an individual.
10 THE WITNESS: Relative to it
11 being consistent with DEA policy,
12 I would have to say that I'm not
13 familiar with DEA's specific
14 written policy around this issue.
15 And I -- my context of my
16 response was strictly relative to
17 this particular statement.
18 BY MR. PIFKO:
19 Q. When you joined
20 AmerisourceBergen and reviewed these
21 letters to familiarize yourself with
22 them, did you understand this to be DEA's
23 position concerning the activities of
24 preventing diversion?

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1 MR. NICHOLAS: Object to the
2 form. Outside the scope.
3 THE WITNESS: I'm not sure I
4 understand your question. If you
5 wouldn't mind repeating it, thank
6 you.
7 BY MR. PIFKO:
8 Q. I'm just asking, basically,
9 when you came into the company in 2014 --
10 and you reviewed these letters, correct?
11 A. Yes.
12 Q. Okay. And you saw this,
13 this provision, right?
14 A. Yes.
15 Q. And you understood, when you
16 joined the company, that this was the
17 DEA's position, correct?
18 MR. NICHOLAS: Object to the
19 form.
20 THE WITNESS: Again, I
21 familiarized myself with all of
22 these documents, including this
23 one statement. And I would let
24 the statement speak for itself.

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1 BY MR. PIFKO:
2 Q. But you understood it,
3 correct?
4 MR. NICHOLAS: Object to the
5 form.
6 THE WITNESS: I read all of
7 the documents.
8 BY MR. PIFKO:
9 Q. Did you understand them?
10 MR. NICHOLAS: Object to the
11 form.
12 THE WITNESS: I'm not sure I
13 understand your question.
14 Did I understand the written
15 documents?
16 BY MR. PIFKO:
17 Q. Yes.
18 A. To the extent that I can
19 read the documents, yes, I can read the
20 documents.
21 Q. And you understood them when
22 you read them?
23 MR. NICHOLAS: Object to the
24 form.

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1 THE WITNESS: I believe I
2 can read the documents, yes.
3 BY MR. PIFKO:
4 Q. And when you read them, you
5 can understand them?
6 A. I have a reading
7 compensation, I guess.
8 MR. NICHOLAS: Hold on.
9 Object to the form.
10 BY MR. PIFKO:
11 Q. You read them and understand
12 them, correct? That's all I'm trying to
13 get -- you're saying "I read them." But
14 I just want to be clear that -- reading
15 and understanding are different things.
16 So when you read them, you
17 understood what you read?
18 MR. NICHOLAS: Object to the
19 form.
20 THE WITNESS: So when I read
21 a document, for reading
22 comprehension, I understand the
23 document. I guess that's why I
24 was a little confused.

<p style="text-align: right;">Page 66</p> <p>1 BY MR. PIFKO: 2 Q. No problem. It's part of 3 the deposition process that we have to be 4 clear about our words sometimes. 5 A. Sure. I appreciate it. 6 Q. So you had reading 7 comprehension with respect to these 8 documents? I just want to confirm that. 9 A. Correct. Yes. Thank you. 10 Q. Okay. Let's go back to 11 Exhibit-3. I want to go to Page 156584. 12 Tell me when you're there. 13 A. I am there. 14 Q. You say, I have had 15 discussions at my company and we think it 16 would be a good idea to have a meeting 17 with DEA to raise our concerns and get 18 further clarification from them, 19 particularly as it relates to reporting 20 suspicious orders. 21 Do you see that? 22 A. I do. 23 Q. What did you mean by that? 24 A. Again, to the best of my</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. What specifically did you 2 want to address with the DEA? 3 MR. NICHOLAS: Objection. 4 Asked and answered several times 5 now. 6 THE WITNESS: Again, it was 7 the shipping requirement 8 statement, to my recollection at 9 this point, that was what I was 10 concerned with. There may have 11 been other things that, looking at 12 the -- just at this e-mail that -- 13 that I could have had a concern 14 with. 15 But at this time, looking at 16 this, that was my major concern. 17 BY MR. PIFKO: 18 Q. So we have the opinion in 19 front of you, Exhibit-2. 20 Can you direct me to the 21 portion of the opinion that you're saying 22 that you were concerned about? 23 MR. NICHOLAS: Well -- 24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 67</p> <p>1 recollection, and seeing no other 2 documents, other than this particular 3 e-mail chain -- and I would refer back to 4 my prior response on a similar question, 5 and that is, I was seeing language in the 6 decision that I had not seen before in 7 the regulation and the law. 8 And that's -- without being 9 more specific than that, that was what 10 my -- what I recall to be my general 11 concern at that time. 12 Q. What did you want to get 13 clarification from the DEA about? 14 MR. NICHOLAS: Objection. 15 Asked and answered. Object to the 16 form. 17 THE WITNESS: Again, just to 18 repeat myself, where I saw that 19 there were new language or 20 different language than the 21 regulation or the laws, I thought 22 that having a meeting with DEA, we 23 could address those issues. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Take your time. 2 MR. NICHOLAS: -- I'll 3 object to the form. But now he's 4 going to have to read the entire 5 opinion while we sit here. 6 Is that what you want him to 7 do? 8 BY MR. PIFKO: 9 Q. Are you able to direct me to 10 the portion of the opinion that you were 11 concerned about? 12 A. I can flip through the 13 document and try to find it, or I can 14 read the whole document. I'm happy to 15 flip through it to try to find the 16 reference to shipping requirement. 17 Q. Well -- 18 A. If I don't find it by 19 flipping through it, I'll have to read 20 the whole document. 21 Q. We had attempted to give you 22 a highlighted version, but let's go back 23 to Page 7. 24 A. I am on Page 7.</p>

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1 Q. Okay. There's a section
2 there, The reporting requirement.
3 Do you see that? We read
4 that?
5 A. In Paragraph 2?
6 Q. Yes. On the bottom there.
7 A. Yes.
8 Q. Okay. If you turn to the
9 next page, continuing through that
10 paragraph, it says, Once a distributor
11 has reported a suspicious order, it must
12 make one of two choices: Decline to ship
13 the order, or conduct some due diligence.
14 And if it is able to determine that the
15 order is not likely to be diverted into
16 illegal channels, ship the order (the
17 shipping requirement).
18 Do you see that?
19 A. Yes, I do.
20 Q. Is this what you were
21 talking about?
22 MR. NICHOLAS: Object to the
23 form.
24 Go ahead.

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1 THE WITNESS: It is.
2 BY MR. PIFKO:
3 Q. What, specifically, was your
4 concern with this language?
5 MR. NICHOLAS: Object to the
6 form. Asked and answered.
7 THE WITNESS: It's
8 contradictory. And it's
9 contradictory to my understanding
10 of what the regulation, the
11 regulations require.
12 As I stated, when
13 AmerisourceBergen determines,
14 after reviewing an order, that
15 it's suspicious, it's forever
16 rejected and it's reported to DEA.
17 So under our program, there
18 is no other choice. If that order
19 is deemed suspicious, then it's
20 reported to the DEA and it's
21 rejected.
22 And, here, that -- there
23 seems to offer another alternative
24 where you can treat a suspicious

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1 order somehow differently. And
2 that would be -- that was part of
3 my concern.
4 BY MR. PIFKO:
5 Q. And in what way do you mean
6 you could "treat it differently"?
7 MR. NICHOLAS: Object to the
8 form.
9 THE WITNESS: It suggests
10 that you can determine an order
11 suspicious, I guess, and then
12 determine it's not suspicious and
13 ship it.
14 And, again, that's a
15 contradiction to what my
16 understanding of what the
17 regulation and the law requires.
18 BY MR. PIFKO:
19 Q. Because it's your
20 understanding that once an order is
21 suspicious, it cannot be shipped,
22 correct?
23 MR. NICHOLAS: Object to the
24 form.

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1 THE WITNESS: Under ABC's
2 program, which is designed to meet
3 the requirements of the law and
4 the regulation, once we identify
5 an order as suspicious, it's
6 rejected and reported as
7 suspicious.
8 BY MR. PIFKO:
9 Q. Let's go back to -- just to
10 be clear, does that summarize your
11 concerns that we were just talking about
12 when we were looking at the e-mail?
13 MR. NICHOLAS: Object to the
14 form. It mischaracterizes the
15 testimony as well.
16 THE WITNESS: Again, in the
17 context of this one e-mail, with
18 no other context and based upon my
19 recollection of the e-mail events,
20 that's one of the concerns.
21 There may have been others
22 that I'm not recalling at this
23 time.
24 BY MR. PIFKO:

<p style="text-align: right;">Page 74</p> <p>1 Q. Understood. Going back to 2 the e-mail, Exhibit-3, you say, I have 3 not yet approached my colleagues at 4 Cardinal or McKesson yet, but I am 5 confident we all share similar concerns. 6 Do you see that? 7 A. I'll try to get to that. Is 8 that on the first -- 9 Q. It's on the last page. 10 A. Last page. Okay, yes. I 11 see that. 12 Q. Did you discuss this issue 13 with people at Cardinal and McKesson? 14 MS. KVESELIS: Objection. 15 THE WITNESS: In the context 16 of this MDL, I've been provided 17 the opportunity to meet with my 18 colleagues at Cardinal and 19 McKesson where we discussed 20 general topics related to 21 diversion control. 22 BY MR. PIFKO: 23 Q. Well, let's back up. I'm 24 just talking about the time period of --</p>	<p style="text-align: right;">Page 76</p> <p>1 meaning communications that 2 included attorneys or 3 communications that were -- and, 4 additionally, that may have been 5 communications that may have been 6 court sanctioned or court ordered. 7 So I will instruct you not 8 to answer to the extent -- to the 9 extent there were attorneys 10 involved, attorney communications 11 involved. 12 MS. KVESELIS: Objection to 13 form. 14 MR. PIFKO: You can only 15 have one objection for you guys, 16 so you're going to have to pick 17 who is making the objections. 18 MR. NICHOLAS: It's mine. 19 MR. PIFKO: Okay. 20 MS. KVESELIS: You can 21 object on privilege grounds and 22 I'm objecting on form. 23 MR. PIFKO: You can't. You 24 can't. Only one -- the protocol</p>
<p style="text-align: right;">Page 75</p> <p>1 specifically of this e-mail, not as a 2 general matter. 3 So my question is, you wrote 4 them -- you wrote this e-mail in July 5 13th, 2017 and you talk about approaching 6 colleagues at those two companies. And 7 my question is more specific than that, 8 in that on or around that time did you 9 specifically reach out to anyone at 10 Cardinal or McKesson to discuss the 11 Masters decision? 12 A. Not -- 13 MS. KVESELIS: Objection. 14 THE WITNESS: Not to my 15 recollection, no. 16 BY MR. PIFKO: 17 Q. At some point later did you 18 reach out to people at Cardinal and 19 McKesson to discuss this? 20 MR. NICHOLAS: I'm going to 21 interpose, not just an objection 22 but an instruction not to respond 23 to this, to the extent it involves 24 the attorney-client privilege,</p>	<p style="text-align: right;">Page 77</p> <p>1 is clear, only one objection 2 stands. Tell me which of your -- 3 which objection stands. 4 MR. NICHOLAS: Well, she's 5 counsel for another party. 6 MR. PIFKO: It doesn't 7 matter. The protocol is specific, 8 it says only one objection. Pick 9 one. 10 MR. DAVISON: That's not 11 correct. 12 MR. NICHOLAS: I didn't 13 think that's what the protocol 14 said. That's why I'm asking. We 15 can look it up, though. 16 MR. PIFKO: This isn't a big 17 deal. Next time we take a break, 18 we'll get it clarified. 19 MR. NICHOLAS: Well, if 20 you'd like, if it will make 21 everyone feel better, I will add 22 an objection to the form to my 23 objection. 24 MR. PIFKO: Done.</p>

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1 MR. NICHOLAS: And scope.
2 BY MR. PIFKO:
3 Q. Now that we've had all of
4 this discussion, let's get back to the
5 question. And I'll ask it in a different
6 way so we can get clarity.
7 My question was, aside from
8 communications where counsel was present,
9 did you reach out to McKesson or Cardinal
10 to discuss the Masters decision?
11 MS. KVESELIS: Objection to
12 form.
13 THE WITNESS: I did not
14 reach out, to the best of my
15 recollection, to Cardinal or
16 McKesson. In fact, this meeting
17 with DEA that was anticipated and
18 discussed never took place.
19 BY MR. PIFKO:
20 Q. Let's go to the first page
21 of the e-mail, 156582.
22 Are you there?
23 A. I am.
24 Q. You say, I have reached out

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1 to McKesson and will do the same with
2 Cardinal and will get back to you when I
3 have their responses.
4 Do you see that? Sorry, on
5 the top of the e-mail.
6 A. Yes, I'm just trying to read
7 that specific e-mail.
8 Okay. I see that.
9 Q. It says, I have reached out
10 to McKesson -- we just read that, okay?
11 A. Yes.
12 Q. Who did you reach out to at
13 McKesson?
14 MS. KVESELIS: Objection to
15 form.
16 THE WITNESS: And, again, I
17 don't have a recollection of
18 specifically reaching out to
19 McKesson to set up any meeting.
20 And no meeting ever took place.
21 BY MR. PIFKO:
22 Q. Understood. But you say
23 here that you reached out to McKesson,
24 agree?

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1 A. Yes, I agree.
2 Q. Is there someone at McKesson
3 that you typically would -- your main
4 contact you would reach out to, if you
5 were going to call them?
6 MR. NICHOLAS: Object to the
7 form.
8 THE WITNESS: Again, I don't
9 have any recollection of reaching
10 out. So I haven't -- I have --
11 don't know who that would have
12 been a reference to, if, in fact,
13 I reached out.
14 BY MR. PIFKO:
15 Q. Do you interact with
16 McKesson in connection with the had?
17 MS. KVESELIS: Objection to
18 form.
19 THE WITNESS: There are
20 phone calls with the had that the
21 distributors participate in,
22 including myself. And there are
23 other representatives from other
24 wholesalers, including McKesson

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1 and Cardinal.
2 BY MR. PIFKO:
3 Q. Do you know any of the other
4 representatives from McKesson and
5 Cardinal who participate?
6 MS. KVESELIS: Objection to
7 form.
8 THE WITNESS: I do know some
9 individuals who I've met at
10 McKesson, but don't know
11 specifically who was on those
12 phone calls. And it changes from
13 time to time.
14 BY MR. PIFKO:
15 Q. Who have you met from
16 McKesson?
17 MS. KVESELIS: Objection to
18 form.
19 THE WITNESS: A couple of
20 individuals. Gary Boggs being one
21 of them.
22 BY MR. PIFKO:
23 Q. He's another DEA agent,
24 correct? Former DEA agent?

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1 A. He is.
2 Q. Do you know him from working
3 at the DEA?
4 A. Never met him before until
5 we both were working at these companies.
6 Q. Anyone else from McKesson
7 that you've met?
8 MS. KVESELIS: Objection to
9 form.
10 THE WITNESS: During the
11 course of the last four and-a-half
12 years at the various had meetings,
13 I'm sure I've met other Cardinal,
14 McKesson representatives.
15 But I couldn't list all
16 their names, no.
17 BY MR. PIFKO:
18 Q. Can you identify any
19 Cardinal representatives that you've met?
20 A. I would respond the same
21 way. I've met several over time and at
22 different meetings. I don't have all
23 their names off the top of my head.
24 Q. Okay. You say in the same

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1 portion of the e-mail, I don't want to
2 wait too long to make the specific
3 request (and want it on the record, in
4 quotes, that we are seeking clarification
5 in this area).
6 Do you see that?
7 A. I do.
8 Q. Why did you want it on the
9 record that you were seeking
10 clarification in this area?
11 A. I thought the subject was
12 important enough to be raised with the
13 DEA. And so having it as documentation
14 because of its importance, I thought,
15 would be important.
16 Q. You wanted it documented
17 because you wanted it clear that the
18 company was reaching out to seek
19 clarification?
20 MR. NICHOLAS: Object to the
21 form.
22 THE WITNESS: I wanted it to
23 be documented because I thought it
24 was an important matter.

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1 BY MR. PIFKO:
2 Q. You mention Demetra Ashley
3 here.
4 Do you see that?
5 A. I do.
6 Q. Who is she?
7 A. She was, at that time, I
8 believe, working as the acting deputy
9 administrator for diversion control.
10 Q. Can you read the first
11 sentence of that first paragraph in your
12 3:11 p.m. e-mail aloud, please?
13 A. So where it starts, I know
14 Demetra?
15 Q. Exactly, yes.
16 A. I know Demetra and, quite
17 frankly, I would prefer to wait until
18 Administrator Rosenberg names a
19 replacement for Millione to have the
20 meeting.
21 Q. What did you mean by that?
22 A. Having someone in an acting
23 capacity at DEA, they don't always have
24 the authority of the position itself.

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1 And I felt that it would be more
2 appropriate to talk to a
3 permanent-position employee that was
4 occupying that particular position as
5 opposed to somebody that maybe didn't
6 carry the full weight of the office.
7 MR. PIFKO: With that, we
8 can take a break.
9 VIDEO TECHNICIAN: Going off
10 the record. 10:19 a.m.
11 - - -
12 (Whereupon, a brief recess
13 was taken.)
14 - - -
15 VIDEO TECHNICIAN: We're
16 back on the record. The time is
17 10:40 a.m.
18 BY MR. PIFKO:
19 Q. We didn't discuss this
20 before we started, but under the rules of
21 law governing this case, you are not
22 permitted to discuss the substance of
23 your deposition during breaks.
24 During the last break, did

<p style="text-align: right;">Page 86</p> <p>1 you discuss the substance of your 2 deposition with counsel? 3 A. No. 4 Q. And we have an agreement 5 that you're not going to be doing that 6 going forward either? 7 A. Yes. 8 Q. Do you have an understanding 9 of the purpose -- 10 MR. NICHOLAS: Somebody is 11 not on mute on the phone, if you 12 guys could just mute your phone. 13 Thanks. 14 BY MR. PIFKO: 15 Q. Let me restart that. 16 You understand that 17 AmerisourceBergen is a registrant under 18 The Controlled Substances Act, correct? 19 A. Yes. 20 Q. And you understand that, as 21 a registrant, AmerisourceBergen has a 22 duty to prevent -- to maintain effective 23 controls to prevent diversion, correct? 24 MR. NICHOLAS: Object to the</p>	<p style="text-align: right;">Page 88</p> <p>1 A. There are a couple different 2 types of diversion. 3 We're not talking about 4 contract diversion here, we're talking 5 about diversion of controlled substances? 6 Q. Correct. 7 A. Really, in a very general 8 description, I would say that diversion 9 takes place any time the legitimate 10 intended -- the legitimate intended 11 prescribing and use of a controlled 12 substance is not met, that somehow the 13 controlled substance is not used for the 14 legitimate medical purposes for what it 15 is intended, in a very general way. 16 Q. Do you understand the 17 concept, under The Controlled Substances 18 Act, of the closed system of 19 distribution? 20 A. I do. 21 Q. What is your understanding 22 of that? 23 A. With the passage of the 24 Controlled Substance Act, there was the</p>
<p style="text-align: right;">Page 87</p> <p>1 form. 2 THE WITNESS: Yes. 3 BY MR. PIFKO: 4 Q. Do you understand why the 5 law wants you to maintain effective 6 controls to prevent diversion? 7 MR. NICHOLAS: Object to the 8 form. Outside the scope. 9 I assume you're asking him 10 this question as an individual at 11 this point, in any event. But I 12 object to the form of the 13 question. 14 THE WITNESS: Could you 15 repeat your question, please? 16 BY MR. PIFKO: 17 Q. What's diversion? 18 MR. NICHOLAS: Object to the 19 form. 20 THE WITNESS: Diversion in 21 the context of the pharmaceutical 22 industry? 23 BY MR. PIFKO: 24 Q. Yes.</p>	<p style="text-align: right;">Page 89</p> <p>1 design of a closed system of distribution 2 of controlled substances. And the system 3 would be closed effectively by requiring 4 anybody within that system to have a DEA 5 registration; so whether you're a 6 manufacturer, a distributor, 7 practitioner, pharmacist. 8 The goal of -- the goal of 9 the closed system is to create this body 10 of registered entities that, by getting 11 that registration, would give you the 12 authority and permission to carry out 13 whatever that function was that you had 14 within that registrant community. 15 Q. And you understand that 16 along with authority to carry out that 17 function, you also have certain legal and 18 regulatory obligations that you must 19 comply with, correct? 20 MR. NICHOLAS: Object to the 21 form. 22 THE WITNESS: That 23 AmerisourceBergen has, as a 24 registrant, wholesale distributor,</p>

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1 has certain requirements imposed
2 upon it, yes.
3 BY MR. PIFKO:
4 Q. As a result of being a
5 registrant?
6 A. Yes.
7 Q. And one of those
8 requirements is to maintain effective
9 controls to prevent diversion, correct?
10 MR. NICHOLAS: Object to the
11 form.
12 THE WITNESS: Yes.
13 BY MR. PIFKO:
14 Q. Let's just -- are you
15 familiar with the scheduling of
16 prescription drugs or drugs in general,
17 substances?
18 MR. NICHOLAS: Object to the
19 form. Outside the scope.
20 THE WITNESS: Referring to
21 the DEA scheduling?
22 BY MR. PIFKO:
23 Q. Yes.
24 A. Yes. I'm generally familiar

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1 with it.
2 Q. Do you know what -- a
3 substance that's classified as a Schedule
4 II, what's that mean?
5 MR. NICHOLAS: Same
6 objection.
7 THE WITNESS: Generally,
8 looking at the scheduling of
9 controlled substances, generally
10 speaking, the design of the
11 schedule takes into effect -- or
12 takes into consideration whether a
13 product has some medical value and
14 it takes in the potential of abuse
15 of a product.
16 And so moving from the lower
17 schedule to a higher schedule, you
18 would generally see a higher abuse
19 potential of the products within
20 those different schedules. And,
21 conversely, you would see less
22 medical use and more medical use
23 as you increase in schedules.
24 That's a general

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1 description.
2 BY MR. PIFKO:
3 Q. Do you understand a Schedule
4 I substance has -- the U.S. government
5 has said it has no legitimate medical
6 purpose? Do you understand that?
7 MR. NICHOLAS: Objection.
8 Outside the scope.
9 THE WITNESS: I'm familiar
10 with some of the substances within
11 Schedule I that are illegal drugs.
12 BY MR. PIFKO:
13 Q. Well, let's focus on
14 Schedule II substances.
15 Do you understand that the
16 litigation for which we're here today
17 concerns opioid products?
18 A. Yes.
19 Q. Can you tell me what an
20 opioid product is?
21 A. Again, there is -- there are
22 opioids and there are opiates. There
23 tends to be some confusion. I think most
24 people today generally refer to opioids.

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1 Opiates would be those
2 products that have the natural derivative
3 coming from a natural plant, whereas
4 opioids would have a synthetic creation
5 and resemble the natural ingredient.
6 And so talking about
7 opioids, you would be talking about
8 oxycodone, for example. And talking
9 about opiates, you would be talking about
10 opium. But there's been some mixing of
11 some of this terminology.
12 Q. An opiate is derived from
13 the poppy plant, correct?
14 A. Yes.
15 Q. You mentioned hydrocodone --
16 I mean, you mentioned oxycodone as an
17 opioid, correct?
18 A. Yes.
19 Q. What about hydrocodone, do
20 you know what that is?
21 A. Opioid, yes.
22 Q. Are there any other opioid
23 products you can identify?
24 A. Fentanyl would be an opioid

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1 product. And there's a pretty long list.
2 And to be clear, I'm not a pharmacist.
3 Q. Understood.
4 A. I want to make sure that's
5 clear for the record.
6 Q. Do you understand that those
7 substances are Schedule II substances?
8 A. Yes.
9 Q. And do you understand --
10 A. I'm sorry, just for the
11 record.
12 Oxycodone and hydrocodone?
13 Q. Yes.
14 A. Yes.
15 Q. And fentanyl?
16 A. Yes.
17 MR. NICHOLAS: What time
18 period are we talking about?
19 THE WITNESS: Again, there
20 was a rescheduling of hydrocodone
21 where it was relatively recently
22 put in II, Schedule II.
23 BY MR. PIFKO:
24 Q. In 2014 it moved from

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1 Schedule III to Schedule II, correct?
2 A. Yes, sir.
3 Q. You understand that a
4 product that is a Schedule II substance
5 has been deemed, under the laws, to have
6 a high potential for abuse, correct?
7 MR. NICHOLAS: Object to the
8 form.
9 THE WITNESS: Yes, generally
10 speaking.
11 BY MR. PIFKO:
12 Q. So when we talk about
13 preventing diversion, why do we want to
14 prevent Schedule II products from being
15 diverted?
16 MR. NICHOLAS: Object to the
17 form. Object to the scope.
18 THE WITNESS: I'm not sure I
19 understand the question.
20 BY MR. PIFKO:
21 Q. It's your job at
22 AmerisourceBergen to run its efforts to
23 prevent diversion, correct?
24 A. Correct. It's to oversee

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1 our diversion control program, yes.
2 Q. Okay. And beyond complying
3 with the legal requirements, do you
4 understand why you want to prevent
5 Schedule II substances from getting into
6 illegitimate hands?
7 MR. NICHOLAS: Object to the
8 form. Object to the scope.
9 THE WITNESS: I'm still not
10 sure I understand the question.
11 BY MR. PIFKO:
12 Q. You testified earlier that
13 the idea of preventing diversion is to
14 prevent products from getting into
15 illegitimate medical use, correct?
16 MR. NICHOLAS: Object to the
17 form. Object to the scope.
18 THE WITNESS: In part, yes.
19 BY MR. PIFKO:
20 Q. And what I'm trying to
21 understand is if you have an
22 understanding as to why we want to do
23 that.
24 MR. NICHOLAS: Object to the

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1 form. Object to the scope.
2 THE WITNESS: Again, as
3 you've stated, as a registrant, we
4 have certain requirements imposed
5 upon us. And I oversee the
6 programs at ABC that we utilize to
7 adhere to those requirements.
8 In terms of why do we want
9 to prevent diversion, I can offer
10 my individual view. But, again,
11 that would be not responding to
12 your -- not being responsive as
13 the company representative.
14 BY MR. PIFKO:
15 Q. I'd like you to give me your
16 view, however we're going to hear it.
17 MR. NICHOLAS: Object to the
18 form. Object to the scope.
19 Go ahead.
20 THE WITNESS: So, again,
21 with that caveat in mind that I
22 mentioned, we have anti-diversion
23 programs in place to prevent the
24 misuse and abuse of controlled

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<p>1 substances.</p> <p>2 BY MR. PIFKO:</p> <p>3 Q. So if we are not effective</p> <p>4 in preventing diversion, we can have</p> <p>5 misuse of controlled substances, agree?</p> <p>6 MR. NICHOLAS: Object to the</p> <p>7 form. Object to the scope.</p> <p>8 THE WITNESS: So, again,</p> <p>9 here there is conjecture in your</p> <p>10 question about if we -- I'm not</p> <p>11 sure who the "we" is, but</p> <p>12 AmerisourceBergen has effective</p> <p>13 controls in place to prevent</p> <p>14 diversion.</p> <p>15 So I guess that would be my</p> <p>16 response.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. Maybe it was a bad question</p> <p>19 by me using the term "we," so I'll ask it</p> <p>20 again in a different way.</p> <p>21 A. Sure.</p> <p>22 Q. And maybe we can work</p> <p>23 through that.</p> <p>24 If any registrant, not</p>	<p>1 result?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form. Object to the scope. Asked</p> <p>4 and answered.</p> <p>5 THE WITNESS: Again, the</p> <p>6 conjecture there, I can't respond</p> <p>7 to a situation where there's not a</p> <p>8 factual bases.</p> <p>9 So I'll just rely upon my</p> <p>10 previous response that</p> <p>11 AmerisourceBergen has effective</p> <p>12 controls in place to prevent</p> <p>13 diversion.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. In carrying out your efforts</p> <p>16 to prevent diversion, are you trying to</p> <p>17 prevent drug abuse?</p> <p>18 MR. NICHOLAS: Object to the</p> <p>19 form. Object to the scope.</p> <p>20 He's here to answer factual</p> <p>21 questions today.</p> <p>22 THE WITNESS: So on the</p> <p>23 first part, we have effective</p> <p>24 controls in place to prevent</p>
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<p>1 speaking about any specific one, who has</p> <p>2 a duty to maintain effective controls to</p> <p>3 prevent diversion, does not maintain</p> <p>4 effective controls to prevent diversion,</p> <p>5 we can have drug abuse, correct?</p> <p>6 MR. NICHOLAS: Object to the</p> <p>7 form. Object to the scope.</p> <p>8 THE WITNESS: So two things.</p> <p>9 Again, if -- starting your</p> <p>10 question having some conjecture</p> <p>11 there, I really can't respond to</p> <p>12 conjecture. And also would not</p> <p>13 respond to other registrants'</p> <p>14 duties and requirements. I'll</p> <p>15 respond to ABC's.</p> <p>16 And, again, my response</p> <p>17 would be that we have effective</p> <p>18 controls in place to prevent</p> <p>19 diversion.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. Let me ask you this way: If</p> <p>22 AmerisourceBergen did not have effective</p> <p>23 controls to prevent diversion, do you</p> <p>24 believe that drug abuse could occur as a</p>	<p>1 diversion.</p> <p>2 On the second part of that</p> <p>3 question, I believe I provided my</p> <p>4 view relative to drug abuse.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. Forgive me, but I don't</p> <p>7 understand.</p> <p>8 So I'm just asking you --</p> <p>9 when you say you provided your view, I</p> <p>10 don't understand the answer yet. So I</p> <p>11 just would like you to express it again.</p> <p>12 MR. NICHOLAS: Well,</p> <p>13 obviously, in the form of that</p> <p>14 question it's clear that it's been</p> <p>15 asked and answered. Object to the</p> <p>16 form. Object to the scope. Asked</p> <p>17 and answered.</p> <p>18 THE WITNESS: Maybe we can</p> <p>19 go back to the question, and we'll</p> <p>20 start again.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. Of course. I'll try to ask</p> <p>23 it a different way.</p> <p>24 Do you believe there's a</p>

<p style="text-align: right;">Page 102</p> <p>1 linkage between drug abuse and 2 maintaining controls to prevent 3 diversion? 4 MR. NICHOLAS: Object to the 5 form. Object to the scope. 6 THE WITNESS: And, again, 7 the question would call for my 8 personal opinion. 9 And to that, I would only 10 say that I oversee programs at ABC 11 that are effective in terms of 12 preventing diversion. 13 BY MR. PIFKO: 14 Q. That's not my question. And 15 I understand that you're trying to speak 16 to an issue. But you really need to 17 answer the question. 18 And my question is if you 19 believe there's a linkage between drug 20 abuse and maintaining controls to prevent 21 diversion? 22 I don't want an answer about 23 what the policies are or procedures are, 24 that's not what I'm asking. I'm simply</p>	<p style="text-align: right;">Page 104</p> <p>1 AmerisourceBergen's procedures in this 2 question. 3 I'm simply asking if you 4 understand that there's a linkage between 5 effective controls to prevent diversion 6 and drug abuse? 7 MR. NICHOLAS: Same 8 objection. All of my same 9 objections. 10 THE WITNESS: And I would 11 rely upon my previous response. 12 BY MR. PIFKO: 13 Q. Your previous response is 14 insufficient. You have not answered the 15 question. 16 Sir, do you understand that 17 you are legally obligated to answer my 18 questions, unless he instructs you not to 19 answer; and he has to have a valid basis. 20 You need to answer my questions. You 21 cannot refuse to answer the questions, 22 okay? Do you understand that? 23 MR. NICHOLAS: He's not 24 refusing to answer the questions.</p>
<p style="text-align: right;">Page 103</p> <p>1 asking if you believe there's a linkage 2 between drug abuse and maintaining 3 effective controls to prevent diversion. 4 MR. NICHOLAS: Hold on. 5 BY MR. PIFKO: 6 Q. Do you understand the 7 question? 8 MR. NICHOLAS: Hold on. 9 I'll object to the form. I'll 10 object to the scope. The question 11 has been asked a number of times. 12 He's not a social scientist. 13 He's not an epidemiologist. 14 THE WITNESS: So I'd go back 15 to my response, and that is that 16 when it comes to our requirements 17 at ABC to have effective controls 18 in place to prevent diversion, we 19 meet those requirements. 20 BY MR. PIFKO: 21 Q. The record is clear that 22 you're not giving an answer to the 23 question. I didn't ask you if you meet 24 the requirements or anything about</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. PIFKO: He is. 2 MR. NICHOLAS: He's 3 answering the questions. 4 MR. PIFKO: No. In 5 giving -- 6 MR. NICHOLAS: He's 7 answering the question. 8 MR. PIFKO: In giving 9 evasive answers -- 10 MR. NICHOLAS: You can't -- 11 MR. PIFKO: -- and speaking 12 about something that's not 13 responsive to my question is not 14 answering. It's not cooperative. 15 And we will address it. 16 BY MR. PIFKO: 17 Q. You're a man of the law, I 18 don't need to explain that to you. You 19 understand. 20 We need your cooperation. 21 This is a serious matter. You need to 22 answer the question, okay? 23 MR. NICHOLAS: Hold on. 24 BY MR. PIFKO:</p>

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1 Q. And if I ask you a question
2 that's a yes-or-no question, you can't go
3 and start meandering about the policies
4 and procedures, okay? You need to think
5 about what I'm asking and you need to
6 answer it.
7 Do you understand?
8 MR. NICHOLAS: That's a
9 lecture. He doesn't need a
10 lecture. It's inappropriate.
11 BY MR. PIFKO:
12 Q. Do you understand what I'm
13 telling you, sir?
14 MR. NICHOLAS: And you can't
15 talk over me.
16 MR. PIFKO: I can. You're
17 not objecting.
18 MR. NICHOLAS: Then you'll
19 keep talking and I'll keep
20 talking. You're talking over me.
21 You're lecturing him, you're
22 bullying him and harassing.
23 MR. PIFKO: Because he's not
24 cooperating.

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1 MR. NICHOLAS: I'm not
2 instructing him not to answer.
3 MR. PIFKO: He's not
4 complying with the rules.
5 MR. NICHOLAS: He's answered
6 the question about eight times.
7 MR. PIFKO: He's not.
8 And --
9 MR. NICHOLAS: As you said
10 in the Merrill --
11 MR. PIFKO: -- the record is
12 clear.
13 MR. NICHOLAS: As you said
14 in the Merrill Gordon deposition,
15 he's entitled to answer the
16 deposition. Your witness is
17 entitled --
18 MR. PIFKO: You can do your
19 lawyering all you want, but he's
20 not cooperating.
21 MR. NICHOLAS: I disagree.
22 MR. PIFKO: Okay.
23 BY MR. PIFKO:
24 Q. Sir, do you understand what

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1 I just said to you about the instructions
2 about complying about this deposition?
3 A. Yes.
4 Q. Do you intend to comply?
5 A. I have been complying.
6 Q. I disagree with you,
7 respectfully. I am asking you very
8 specific questions, and you are not
9 responding to my questions.
10 Do you intend to provide
11 accurate questions -- or answers that
12 respond to exactly what I ask you?
13 MR. NICHOLAS: Object to the
14 form.
15 THE WITNESS: I intend to
16 answer your questions accurately,
17 yes.
18 BY MR. PIFKO:
19 Q. Do you intend to respond to
20 the questions that I ask you?
21 MR. NICHOLAS: Object to the
22 form.
23 THE WITNESS: Yes.
24 BY MR. PIFKO:

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1 Q. If I ask you what your
2 favorite color is, I don't want to hear
3 what you had for dinner.
4 Do you understand that?
5 MR. NICHOLAS: Object to the
6 form. Pretty obnoxious. No need
7 for that kind of thing.
8 Right?
9 BY MR. PIFKO:
10 Q. Do you understand that?
11 MR. NICHOLAS: Object to the
12 form.
13 THE WITNESS: Yes.
14 BY MR. PIFKO:
15 Q. So let's try this again.
16 Do you understand there to
17 be a linkage between preventing diversion
18 and drug abuse?
19 MR. NICHOLAS: Object to the
20 form. All the same objections.
21 THE WITNESS: Again, the
22 question has been asked several
23 times and the question concerns
24 having effective controls.

<p style="text-align: right;">Page 110</p> <p>1 And I've responded several 2 times relative to the issue of 3 effective controls that we have in 4 place at ABC to prevent diversion. 5 I would rely upon that 6 response again. 7 BY MR. PIFKO: 8 Q. That's not the question I've 9 asked you. You're not answering. You're 10 not cooperating, okay? 11 I'm going to bring you back 12 here, we're going to go all day here, and 13 I'm going to ask you all the questions I 14 want to ask you. And we're going to have 15 to bring you back here, and we're going 16 to have to get some more answers because 17 you're not cooperating, okay? I want you 18 to understand that. 19 MR. NICHOLAS: Object to the 20 form. Object to the speech. 21 What he's saying isn't true. 22 Go on. 23 BY MR. PIFKO: 24 Q. If AmerisourceBergen does</p>	<p style="text-align: right;">Page 112</p> <p>1 BY MR. PIFKO: 2 Q. You haven't. Please answer. 3 MR. NICHOLAS: Object to the 4 form. 5 THE WITNESS: If we fail to 6 have effective controls in place, 7 is a question that doesn't state 8 facts. It states conjecture. 9 And I can't respond relative 10 to conjecture. I can respond 11 relative to the facts of the 12 matter around effective controls. 13 We have effective controls in 14 place to prevent diversion -- 15 BY MR. PIFKO: 16 Q. In joining -- 17 A. -- at ABC. 18 Q. In joining AmerisourceBergen 19 in 2014, did you review the company's 20 prior practices and procedures regarding 21 diversion? 22 A. Yes. 23 Q. How far back did you 24 familiarize yourself with the company's</p>
<p style="text-align: right;">Page 111</p> <p>1 not maintain effective controls to 2 prevent diversion, do you believe that 3 drug abuse can occur? 4 MR. NICHOLAS: Object to the 5 form. Outside the scope. 6 THE WITNESS: Again, you've 7 asked me this question in several 8 different formats and, again, 9 you're asking with this conjecture 10 if we didn't have them in place. 11 And my only response to that 12 is, we have them in place, 13 effective controls, to prevent 14 diversion. And so I can't respond 15 to a question relative to 16 conjecture. 17 BY MR. PIFKO: 18 Q. If you fail to prevent 19 diversion, do you believe that drugs can 20 get into illegitimate channels? 21 MR. NICHOLAS: Object to the 22 form. 23 THE WITNESS: I've responded 24 to the question.</p>	<p style="text-align: right;">Page 113</p> <p>1 practices and procedures concerning 2 diversion? 3 A. I don't know that I can 4 assign a specific year. I would say 5 looking back several years, more than two 6 or three. 7 Q. Are you familiar with the 8 company's practices and procedures prior 9 to 2007? 10 MR. NICHOLAS: Object to the 11 scope. This is way outside the 12 scope of his 30(b)(6) domain. 13 THE WITNESS: I may have 14 some limited knowledge relative to 15 the practices prior to 2007. 16 BY MR. PIFKO: 17 Q. You testified as the 18 corporate representative in litigation 19 brought by the West Virginia Attorney 20 General on behalf of AmerisourceBergen, 21 correct? 22 A. Yes. 23 Q. And you testified about the 24 company's policies and procedures,</p>

<p style="text-align: right;">Page 114</p> <p>1 correct? Concerning diversion?</p> <p>2 A. Yes.</p> <p>3 Q. How far back were you</p> <p>4 familiar with the company's policies in</p> <p>5 connection with your testimony in that</p> <p>6 case?</p> <p>7 MR. NICHOLAS: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: To my</p> <p>10 recollection, the stated time</p> <p>11 period was some time in 2007, if I</p> <p>12 recall correctly.</p> <p>13 BY MR. PIFKO:</p> <p>14 Q. So you have some</p> <p>15 familiarity, from testifying in that</p> <p>16 litigation, with the company's practices</p> <p>17 going back to 2007?</p> <p>18 MR. NICHOLAS: Object to</p> <p>19 the form. Object to the form.</p> <p>20 Object to the scope. He's now</p> <p>21 testifying individually.</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. Do you believe that, in</p>	<p style="text-align: right;">Page 116</p> <p>1 form. Object to the scope.</p> <p>2 THE WITNESS: Again, I'd</p> <p>3 have to ask you to qualify it</p> <p>4 more, because that's quite broad</p> <p>5 of a question.</p> <p>6 So perhaps it would be -- I</p> <p>7 could be more responsive if the</p> <p>8 question was narrowed down some.</p> <p>9 - - -</p> <p>10 (Whereupon,</p> <p>11 AmerisourceBergen-May Exhibit-4,</p> <p>12 ABDCMDL 00274105-118, was marked</p> <p>13 for identification.)</p> <p>14 - - -</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. I'm handing you what is</p> <p>17 marked as Exhibit-4.</p> <p>18 For the record, this is a</p> <p>19 report. The metadata reflects that it's</p> <p>20 dated August 28th, 2015. It's entitled,</p> <p>21 FTI Consulting, Inc., Health Solutions</p> <p>22 Practice. It's Bates labeled ABDCMDL</p> <p>23 00274105 through 118.</p> <p>24 Take a moment to review this</p>
<p style="text-align: right;">Page 115</p> <p>1 2007, AmerisourceBergen's policies and</p> <p>2 procedures for preventing diversion were</p> <p>3 appropriate?</p> <p>4 MR. NICHOLAS: Object to the</p> <p>5 form. Object to the scope.</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. PIFKO:</p> <p>8 Q. Has anyone ever told you</p> <p>9 that you have problems with your</p> <p>10 diversion control program?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form. And scope.</p> <p>13 THE WITNESS: I would say it</p> <p>14 would be helpful to narrow the</p> <p>15 question, because anyone is --</p> <p>16 that's quite broad. And I would</p> <p>17 say in the broad context, the</p> <p>18 answer would be no.</p> <p>19 BY MR. PIFKO:</p> <p>20 Q. No one has ever told you</p> <p>21 that AmerisourceBergen's program has gaps</p> <p>22 with respect to maintaining effective</p> <p>23 controls against diversion?</p> <p>24 MR. NICHOLAS: Object to the</p>	<p style="text-align: right;">Page 117</p> <p>1 and let me know when you're ready to</p> <p>2 discuss it.</p> <p>3 A. Okay.</p> <p>4 Q. Have you seen this document</p> <p>5 before?</p> <p>6 A. I have.</p> <p>7 Q. When was the last time you</p> <p>8 saw this document?</p> <p>9 A. In the last couple of weeks.</p> <p>10 Q. This is something you</p> <p>11 reviewed in preparing for your</p> <p>12 deposition?</p> <p>13 A. Yes.</p> <p>14 Q. When was the first time you</p> <p>15 saw this document?</p> <p>16 A. I saw this document, or</p> <p>17 portions of the document, back when it</p> <p>18 was being produced.</p> <p>19 Q. And as I told you, the</p> <p>20 electronic data that came with the</p> <p>21 production reflects that its date is</p> <p>22 August 28th, 2015.</p> <p>23 Does that sound familiar</p> <p>24 with when it would have been produced?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. Yes.</p> <p>2 Q. And you recall receiving it</p> <p>3 on or around that time?</p> <p>4 A. Yes.</p> <p>5 Q. Can you tell me what this</p> <p>6 document is?</p> <p>7 A. This document is a summary</p> <p>8 report that was provided by FTI</p> <p>9 Consulting, an outside contract</p> <p>10 consultant, who did a review of various</p> <p>11 program areas at CSRA.</p> <p>12 Q. And one of the program areas</p> <p>13 was the diversion control team, correct?</p> <p>14 A. Correct.</p> <p>15 Q. That's the team that you</p> <p>16 head up, correct?</p> <p>17 A. Yes.</p> <p>18 Q. And you headed that team up</p> <p>19 at the time this report was commissioned,</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. Did you have any involvement</p> <p>23 in commissioning this report?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 120</p> <p>1 objection.</p> <p>2 THE WITNESS: So, again, for</p> <p>3 the first part of that, did anyone</p> <p>4 in the universe indicate any</p> <p>5 concerns? It's really broad.</p> <p>6 Perhaps you could narrow that down</p> <p>7 for me.</p> <p>8 BY MR. PIFKO:</p> <p>9 Q. Fair enough. Maybe that was</p> <p>10 a bad question.</p> <p>11 I'm just trying to</p> <p>12 understand if anyone ever told you that</p> <p>13 they wanted to have a consultant come in</p> <p>14 and review the diversion control team's</p> <p>15 practices and procedures because they</p> <p>16 were concerned about its functioning.</p> <p>17 MR. NICHOLAS: Object to the</p> <p>18 form. And I think it</p> <p>19 mischaracterizes prior testimony.</p> <p>20 But go ahead.</p> <p>21 THE WITNESS: In the context</p> <p>22 of this report and what I have in</p> <p>23 front of me, and at the time that</p> <p>24 this report was compiled, we were</p>
<p style="text-align: right;">Page 119</p> <p>1 Q. Do you know who did</p> <p>2 commission this report?</p> <p>3 A. It would have been Chris</p> <p>4 Zimmerman and -- possibly in concert with</p> <p>5 legal.</p> <p>6 Q. Did you discuss the</p> <p>7 commissioning of this report with Mr.</p> <p>8 Zimmerman?</p> <p>9 A. I don't recall.</p> <p>10 Q. Do you have an understanding</p> <p>11 about why this report was commissioned?</p> <p>12 A. At this time, I don't have a</p> <p>13 specific recollection as to why it was</p> <p>14 commissioned.</p> <p>15 Q. Did anyone ever tell you</p> <p>16 they were concerned about the diversion</p> <p>17 control team's ability to comply with</p> <p>18 their responsibilities --</p> <p>19 MR. NICHOLAS: Object to the</p> <p>20 form.</p> <p>21 BY MR. PIFKO:</p> <p>22 Q. -- and that's why -- and</p> <p>23 that's why this report was commissioned.</p> <p>24 MR. NICHOLAS: Same</p>	<p style="text-align: right;">Page 121</p> <p>1 engaged with FTI specifically</p> <p>2 regarding some work around the</p> <p>3 order monitoring program.</p> <p>4 But in terms of this</p> <p>5 particular effort, I don't have</p> <p>6 any specific recollection of the</p> <p>7 motivation of compiling this</p> <p>8 report.</p> <p>9 BY MR. PIFKO:</p> <p>10 Q. What's your understanding of</p> <p>11 what FTI's engagement was with respect to</p> <p>12 the order monitoring program at this</p> <p>13 time?</p> <p>14 MR. NICHOLAS: Hold on. Let</p> <p>15 me object, just to interpose an</p> <p>16 instruction not to answer -- I'm</p> <p>17 permitting him to answer questions</p> <p>18 about this document.</p> <p>19 I'm not going to permit him</p> <p>20 to answer questions with regard to</p> <p>21 any aspects of work with FTI that</p> <p>22 may have involved attorney</p> <p>23 direction or the attorney-client</p> <p>24 privilege.</p>

<p style="text-align: right;">Page 122</p> <p>1 So I'm not saying you can't 2 talk to him about this document, 3 but I think that question, I have 4 to instruct him not to answer. 5 MR. PIFKO: Just for clarity 6 of the record, you're asserting 7 privilege over FTI's work with the 8 order monitoring program that he 9 just referred to? 10 MR. NICHOLAS: I'm asserting 11 privilege over -- to the extent 12 that there's work done involving 13 FTI that involved the 14 attorney-client privilege, 15 attorney supervision, attorney 16 involvement. 17 So I think you should just 18 ask your questions and -- but 19 that's the instruction. That's 20 the instruction to the witness. 21 MR. PIFKO: And in the 22 interest of time, I'm just trying 23 to understand. So you would 24 object to any questions about this</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. You said there was other 2 work that AmerisourceBergen had engaged 3 FTI to perform. And I'm just trying to 4 understand what that other work was, sir. 5 MR. NICHOLAS: Yes. And I 6 am asserting privilege in response 7 to that question. 8 You can ask questions about 9 the -- about this work, the work 10 that was done here contained in 11 this document. 12 BY MR. PIFKO: 13 Q. Let's go to -- sorry, which 14 exhibit is this again, 4? Let's go back 15 to Exhibit-4, turn to Page 8. 16 Let me know when you're 17 there. 18 A. I'm there. 19 Q. For housekeeping, in 20 reviewing Exhibit-4, you agree this is a 21 true and correct copy of the report that 22 FTI prepared for you at this time? 23 MR. NICHOLAS: Object to the 24 form.</p>
<p style="text-align: right;">Page 123</p> <p>1 engagement that he referred to 2 between FTI and AmerisourceBergen 3 concerning the order monitoring 4 program? 5 MR. NICHOLAS: Your question 6 is assuming that -- your question 7 has assumptions in it as to 8 whether there's one engagement or 9 multiple engagements. 10 I'm just saying, I'm going 11 to permit him to answer questions 12 about this document and probably 13 you should just go ahead and do 14 that. 15 BY MR. PIFKO: 16 Q. What work has FTI been 17 engaged to provide for AmerisourceBergen? 18 MR. NICHOLAS: Well, now 19 you're trying to snatch defeat 20 from the jaws of victory here. 21 I'm letting you talk about 22 this document. I'm instructing 23 him not to answer that question. 24 BY MR. PIFKO:</p>	<p style="text-align: right;">Page 125</p> <p>1 THE WITNESS: Yes. 2 BY MR. PIFKO: 3 Q. So going to Page 8, it says, 4 A large volume of work and responsibility 5 falls to CSRA with respect to managing 6 regulatory compliance and security 7 activities. And some team members 8 indicated that it is difficult to keep up 9 with the demands. This may be because 10 they have not received adequate training 11 or because the team is not sufficiently 12 staffed with the necessary resources or 13 expertise. 14 Do you see that? 15 A. I do. 16 Q. Do you agree with this 17 finding in the report? 18 MR. NICHOLAS: Object to the 19 form. 20 THE WITNESS: Well, my first 21 comment would be, in the context 22 of this report, this doesn't look 23 like a finding. It looks like a 24 comment, not a finding.</p>

<p style="text-align: right;">Page 126</p> <p>1 BY MR. PIFKO: 2 Q. Okay. Well, whatever it is, 3 we don't have to argue about what it is. 4 Do you agree with this 5 statement that I just read from the 6 report? 7 MR. NICHOLAS: Object to the 8 form. 9 THE WITNESS: Again, in the 10 context of the report, it's a 11 statement by the outside 12 consultant where they're making -- 13 or reporting some information. 14 In terms of agreeing or 15 disagreeing, what precisely would 16 I be agreeing or disagreeing to? 17 Because, again, there's several, I 18 guess, points in here. 19 BY MR. PIFKO: 20 Q. Well, do you agree that at 21 this time, some CSRA team members had 22 indicated that it was difficult to keep 23 up with the demands of their jobs? 24 MR. NICHOLAS: Object to the</p>	<p style="text-align: right;">Page 128</p> <p>1 members do not receive much in the way of 2 formal training and instead are, in the 3 best case, provided informal training by 4 being paired with a more experienced 5 resource for a brief onboarding period. 6 Do you see that? 7 A. I do. 8 Q. Do you agree with that 9 statement? 10 A. Again, it's pretty broad. 11 I'm not sure what period of time is 12 involved here. 13 If the report was purposed 14 in 2015, and the state of training 15 relative to CSRA team members at that 16 time, I would disagree with that 17 conclusion. I believe that -- it was my 18 view that, generally speaking, CSRA team 19 members were receiving training that was 20 sufficient for them. 21 Q. Did you -- at the time this 22 report came out, did you discuss your 23 disagreement with that statement with 24 anyone?</p>
<p style="text-align: right;">Page 127</p> <p>1 form. 2 THE WITNESS: I would say 3 that, again, FTI looks like 4 they're reporting on comments that 5 some team members made relative to 6 the demands. 7 To the extent that FTI is 8 accurately reporting those 9 comments, I wouldn't disagree that 10 they're not accurately reporting 11 the comments. 12 In terms of the actual issue 13 relative to some members not being 14 able to keep up with certain 15 demands, I have no -- I don't -- 16 at the time that this report was 17 taken, if there were some people 18 that were doing that, that 19 indicated they weren't keeping up, 20 I don't have any knowledge about 21 that. 22 BY MR. PIFKO: 23 Q. Moving to the next paragraph 24 it says, For the most part, CSRA team</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Again, in the context of 2 this report, which is several pages long, 3 I don't have any specific memories about 4 conversations relative to all of the 5 commentary in this section. 6 Q. It says, after that 7 sentence, As a result, some CSRA 8 personnel feel overwhelmed by the volume 9 of activities they are required to 10 perform, the administrative demands of 11 their position and the lack of direction 12 that they are provided. 13 Do you see that? 14 A. I do. 15 Q. Did you have any 16 understanding that the CSRA personnel, 17 under your team, felt overwhelmed by the 18 volume of the activities they were 19 required to perform, the administrative 20 demands of their position and the lack of 21 direction they were provided? 22 A. Again -- 23 MR. NICHOLAS: Object to the 24 form.</p>

<p style="text-align: right;">Page 130</p> <p>1 THE WITNESS: A couple of</p> <p>2 points.</p> <p>3 First, my team, you know,</p> <p>4 CSRA is the overall umbrella. I</p> <p>5 have the diversion control team at</p> <p>6 that time. Within CSRA, there are</p> <p>7 several other -- there are a</p> <p>8 couple of other sections.</p> <p>9 So these comments generally</p> <p>10 appear to be talking about CSRA in</p> <p>11 general. I'm not precisely clear</p> <p>12 on that. But I just wanted to</p> <p>13 address that, because you just</p> <p>14 specifically said was I aware, in</p> <p>15 terms of the diversion control</p> <p>16 team, as this being an issue.</p> <p>17 And, again, the context of a</p> <p>18 report -- I don't -- I, at that</p> <p>19 time in August of '15, and I was</p> <p>20 really engaged in all of the work</p> <p>21 that we were doing at that time, I</p> <p>22 didn't think that this was an</p> <p>23 issue.</p> <p>24 And so when I see that some</p>	<p style="text-align: right;">Page 132</p> <p>1 specific question.</p> <p>2 In response to seeing the</p> <p>3 statements in here that some team members</p> <p>4 indicated it was difficult to keep up</p> <p>5 with demands and that some CSRA personnel</p> <p>6 felt overwhelmed, did you reach out to</p> <p>7 anyone who was under your direction in</p> <p>8 diversion control to discuss those</p> <p>9 concerns?</p> <p>10 A. I'll say this, in the</p> <p>11 context of this report, in terms of</p> <p>12 resources and the work that's being done</p> <p>13 by the different teams under my</p> <p>14 responsibility, one of the things that I</p> <p>15 do is I keep a close eye on the work that</p> <p>16 we're doing to make sure that we have the</p> <p>17 necessary resources to do our job.</p> <p>18 That's one of the things that's important</p> <p>19 to me.</p> <p>20 And so outside of the</p> <p>21 context of this, I communicate with team</p> <p>22 members relative to their ability to get</p> <p>23 the work done. We've added resources to</p> <p>24 the program over time, based upon some of</p>
<p style="text-align: right;">Page 131</p> <p>1 people feel overwhelmed, I'm not</p> <p>2 sure that -- again, looking at</p> <p>3 this document now in 2018, I'm not</p> <p>4 really sure where I would agree</p> <p>5 with that as well.</p> <p>6 BY MR. PIFKO:</p> <p>7 Q. Did you, at this time,</p> <p>8 undertake any efforts to respond to these</p> <p>9 potential concerns identified in this</p> <p>10 report that we just read?</p> <p>11 A. So there may be specific</p> <p>12 items in this report relative to</p> <p>13 diversion control, specific to diversion</p> <p>14 control, that, at one point, we may have</p> <p>15 taken actions relative to identified</p> <p>16 issues specific to diversion control that</p> <p>17 may not even have been directed related</p> <p>18 to this report.</p> <p>19 But the fact that they were</p> <p>20 items that may have been identified</p> <p>21 that -- where we later took action, there</p> <p>22 could have been items like that under</p> <p>23 diversion control.</p> <p>24 Q. Let me ask you a more</p>	<p style="text-align: right;">Page 133</p> <p>1 that feedback.</p> <p>2 And so I guess I just want</p> <p>3 to make sure that I'm clear that I do</p> <p>4 address that issue, not necessarily in</p> <p>5 the context of this report. Did that</p> <p>6 contribute to my thinking? Maybe at some</p> <p>7 point. I can't say specifically now.</p> <p>8 But resources and how hard</p> <p>9 and how much our people are working is</p> <p>10 always a concern to me.</p> <p>11 Q. Going a little further down</p> <p>12 this page, there's a statement, There is</p> <p>13 also an impression that The Specialty</p> <p>14 Group and sister companies do not</p> <p>15 recognize CSRA as an authoritative body</p> <p>16 and do not have any meaningful contact or</p> <p>17 communications with CSRA.</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Do you know what that's</p> <p>21 about?</p> <p>22 MR. NICHOLAS: Object to the</p> <p>23 form. Outside the scope. It is</p> <p>24 not talking about ABDC.</p>

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1 You can answer.
2 THE WITNESS: Thank you.
3 And, again, I'm not sure who
4 is providing the responses here,
5 and so there's not a lot of
6 context for me.
7 I mean, I know who The
8 Specialty Group is referring to
9 and I know that, from my
10 perspective, the compliance
11 managers that are working now in
12 this legacy specialty area, there
13 is communication with them. And I
14 don't think there's any serious
15 issue there.
16 Again, that's providing my
17 understanding of the relationship
18 and the communication, you know,
19 outside of this commentary.
20 BY MR. PIFKO:
21 Q. Did you work with any of the
22 people at FTI who were doing this report?
23 A. I worked with the people at
24 FTI, but I did not assist with the

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1 composition of this report.
2 Q. What I'm trying to get at
3 is -- that was a foundational question.
4 A. Sure.
5 Q. Do you know who wrote this
6 report at FTI?
7 A. I believe it was, to the
8 best of my recollection, Caroline
9 Conneely.
10 Q. Do you know if she had other
11 team members she was working with to
12 write this report?
13 MR. NICHOLAS: Object to the
14 form.
15 THE WITNESS: I don't know
16 if she had other team members that
17 assisted her.
18 BY MR. PIFKO:
19 Q. You never interacted with
20 anyone else besides her?
21 MR. NICHOLAS: Object to the
22 form.
23 THE WITNESS: I may have. I
24 just don't recall specifically,

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1 relative to this report, you know,
2 who I had conversations with.
3 BY MR. PIFKO:
4 Q. Do you know which CSRA
5 employees were interviewed in connection
6 with this report?
7 A. I do not.
8 Q. Did you ever see any
9 interview notes from any interviews that
10 were conducted in connection with this
11 report?
12 A. I don't recall seeing any
13 interview notes.
14 Q. When it says The Specialty
15 Group, you said you knew who that was.
16 Who is that?
17 MR. NICHOLAS: Objection.
18 We're going pretty far outside the
19 scope here.
20 THE WITNESS: Referring to
21 the -- we now call it Legacy
22 Specialty because the company has
23 undergone some reorganization.
24 But it would be nondrug

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1 company entities.
2 BY MR. PIFKO:
3 Q. What does that mean? Sorry.
4 I don't understand that.
5 MR. NICHOLAS: Same
6 objection. We're well outside the
7 scope.
8 THE WITNESS: There are a
9 group of businesses that are
10 nondrug company entities that we
11 refer to as Specialty Group; for
12 example, a business called
13 Oncology Supply would be part of
14 The Specialty Group.
15 And the reason they're
16 specialty, because they really
17 focused on very specific patient
18 programs. Oncology Supply caters
19 to independent oncology
20 specialists across the country.
21 And that's the focus of their
22 business.
23 BY MR. PIFKO:
24 Q. Did FTI interview you in

<p style="text-align: right;">Page 138</p> <p>1 connection with this report?</p> <p>2 A. They may have. They may</p> <p>3 have.</p> <p>4 Again, I was communicating</p> <p>5 with them very frequently during this</p> <p>6 time period. Were some of those</p> <p>7 communications -- the majority of which</p> <p>8 of those communications were outside of</p> <p>9 this. But does that mean I didn't have</p> <p>10 discussions or take questions with them</p> <p>11 relative to this review? I don't</p> <p>12 specifically recall.</p> <p>13 Q. Do you know if they</p> <p>14 interviewed anyone from the</p> <p>15 investigations team in connection with</p> <p>16 this report?</p> <p>17 A. I don't know who</p> <p>18 specifically they interviewed.</p> <p>19 Q. Let's go to the bottom of</p> <p>20 this page.</p> <p>21 Going from the third line</p> <p>22 down, partially into the sentence, it</p> <p>23 says, It does indicate, especially with</p> <p>24 the run of acquisitions, that compliance</p>	<p style="text-align: right;">Page 140</p> <p>1 A. -- and look at this. And</p> <p>2 then you can ask me the question again.</p> <p>3 Okay.</p> <p>4 Q. When you saw this report,</p> <p>5 did you discuss with anybody a concern</p> <p>6 about this idea that the left hand</p> <p>7 doesn't know what the right hand is doing</p> <p>8 and that somebody might be assuming</p> <p>9 something is being done when it's really</p> <p>10 not?</p> <p>11 MR. NICHOLAS: Object to the</p> <p>12 form, for the reason I just stated</p> <p>13 in response to the previous</p> <p>14 question. Outside the scope.</p> <p>15 THE WITNESS: And, again, I</p> <p>16 keep going back to the context</p> <p>17 and, you know, picking out certain</p> <p>18 parts of the report. I would say</p> <p>19 a couple of things.</p> <p>20 The first being, I don't</p> <p>21 agree with the statement here. It</p> <p>22 mentions acquisitions and</p> <p>23 compliance responsibilities that I</p> <p>24 was involved with during this time</p>
<p style="text-align: right;">Page 139</p> <p>1 responsibilities are too diffuse or their</p> <p>2 ownership is unclear. That creates the</p> <p>3 potential that compliance activities are</p> <p>4 not occurring because the left hand</p> <p>5 doesn't know what the right hand is doing</p> <p>6 or because there's an assumption that</p> <p>7 someone else in the organization is</p> <p>8 taking care of it.</p> <p>9 Do you see that?</p> <p>10 MR. NICHOLAS: Object to the</p> <p>11 form of the question. At the very</p> <p>12 least, since you read nine-tenths</p> <p>13 of the sentence, you could read</p> <p>14 the first phrase in the question</p> <p>15 so that the record is complete.</p> <p>16 BY MR. PIFKO:</p> <p>17 Q. Do you see that portion of</p> <p>18 the document, sir?</p> <p>19 MR. NICHOLAS: Objection to</p> <p>20 the form. Same objection.</p> <p>21 THE WITNESS: So if you</p> <p>22 don't mind, I'll take a moment --</p> <p>23 BY MR. PIFKO:</p> <p>24 Q. Yes.</p>	<p style="text-align: right;">Page 141</p> <p>1 period, and I would say that we</p> <p>2 were completing all of our</p> <p>3 requirements and that we were</p> <p>4 doing so very systematically and</p> <p>5 correctly. And so I disagree with</p> <p>6 this kind of characterization.</p> <p>7 And I guess, going back to</p> <p>8 the beginning of the statement,</p> <p>9 where it says that infrastructure</p> <p>10 is in place to perform</p> <p>11 compliance-related activities,</p> <p>12 that was my understanding at the</p> <p>13 time, that's my understanding of</p> <p>14 how it is today.</p> <p>15 And, again, I just don't</p> <p>16 agree with the overall statement.</p> <p>17 BY MR. PIFKO:</p> <p>18 Q. Let's go on to Page 9 here.</p> <p>19 It says, third paragraph</p> <p>20 down, CSRA is very reactive to</p> <p>21 situations, with certain team members</p> <p>22 describing their job as constantly</p> <p>23 putting out fires. Being in a perpetual</p> <p>24 state of reacting to situations makes it</p>

<p style="text-align: right;">Page 142</p> <p>1 difficult to implement and sustain 2 organizational improvements and prevents 3 resources from focusing on assigned 4 projects. 5 Do you see that? 6 A. I do. 7 Q. Did you believe that CSRA 8 had an issue with -- specifically in the 9 diversion control program, had an issue 10 with the team being reactive and feeling 11 like they were constantly putting out 12 fires? 13 MR. NICHOLAS: Object to the 14 form. 15 THE WITNESS: Again, in the 16 context of this report provided by 17 an outside consultant that 18 essentially did a snapshot into 19 the work that CSRA was 20 performing -- I was on the ground 21 performing that work every single 22 day. And I don't agree with the 23 characterizations in the report. 24 Clearly, work is work and we</p>	<p style="text-align: right;">Page 144</p> <p>1 That's your area, correct? 2 A. Yes. 3 Q. Let's go to the bottom of 4 this page here. There's a Heading 1, 5 Diversion Control. 6 Do you see that? 7 A. Page 10? 8 Q. Yes. 9 A. Yes. 10 Q. Okay. Second paragraph, it 11 says, Orders that exceed established 12 parameters are held in the system and 13 identified for investigation prior to 14 adjudication of the order. ABC does not 15 have a policy to determine which 16 associates at the distribution center are 17 responsible for reviewing orders. 18 Do you see that? 19 A. Yes. 20 Q. Then it says, Although all 21 associates who have access to the OMP 22 system are required to be trained in 23 reviewing orders, there is no consistency 24 with respect to who is reviewing these</p>
<p style="text-align: right;">Page 143</p> <p>1 have a lot of it. But as I 2 mentioned, we do a lot to make 3 sure that we manage it 4 appropriately. And so to the 5 extent that these statements are 6 made that, you know, we have 7 challenges in our work, constantly 8 putting out a fire, what does that 9 mean exactly? Do we have 10 challenges in our daily work? We 11 absolutely have challenges for 12 your daily work. Whether you're 13 at a law firm or 14 AmerisourceBergen, that's a 15 reality of work. 16 And so -- and I don't mean 17 to be in any way flip, but this is 18 work. And so it's a 19 characterization. I believe that 20 we were getting our jobs done. 21 Some days are longer than others. 22 BY MR. PIFKO: 23 Q. Let's go to the section 24 about diversion control.</p>	<p style="text-align: right;">Page 145</p> <p>1 orders. This presents a significant risk 2 area because the company needs to be 3 compliant with DEA regulations and able 4 to explain and defend their decisions. 5 Do you see that? 6 A. I do. 7 Q. Did you have an 8 understanding that the consultant was 9 concerned about AmerisourceBergen's 10 training and making sure that there was 11 consistency with respect to the 12 distribution center personnel who were 13 reviewing orders that exceeded the 14 company's parameters? 15 MR. NICHOLAS: Object to the 16 form. 17 THE WITNESS: So, again, in 18 the context of this document, I 19 think it's pointed out early on in 20 the document here, in the very 21 first paragraph, that we were 22 engaged in implementing a number 23 of process and system 24 improvements.</p>

<p style="text-align: right;">Page 146</p> <p>1 That aside, the fact -- the</p> <p>2 statement that associates who have</p> <p>3 access to the OMP system are not</p> <p>4 trained, I disagree with. And,</p> <p>5 again, at that time when this</p> <p>6 report was composed, we had</p> <p>7 designated distribution center</p> <p>8 personnel who we referred to as</p> <p>9 RPICs, or responsible persons in</p> <p>10 charge, they were designated.</p> <p>11 And so people who are not</p> <p>12 designated as RPICs did not have</p> <p>13 this duty. And those designated</p> <p>14 people received training and</p> <p>15 training that was updated</p> <p>16 subsequently, there was testing</p> <p>17 materials.</p> <p>18 And so to the extent that</p> <p>19 this statement says that there was</p> <p>20 no policy or practice around who</p> <p>21 was reviewing orders at the</p> <p>22 distribution center, I disagree</p> <p>23 with.</p> <p>24 But I also would like to add</p>	<p style="text-align: right;">Page 148</p> <p>1 response to this report?</p> <p>2 MR. NICHOLAS: Object to the</p> <p>3 form.</p> <p>4 THE WITNESS: I engaged in</p> <p>5 reviewing all of our policies and</p> <p>6 procedures that were in place when</p> <p>7 I arrived at the company regarding</p> <p>8 diversion control.</p> <p>9 I then subsequently,</p> <p>10 actually after this time, and I</p> <p>11 believe it was in 2016, rewrote</p> <p>12 and published a new set of</p> <p>13 policies and procedures</p> <p>14 specifically around diversion</p> <p>15 control. That included policies</p> <p>16 and procedures relative to order</p> <p>17 monitoring and suspicious order</p> <p>18 reporting.</p> <p>19 The distribution centers</p> <p>20 also have their own sets of</p> <p>21 policies and procedures, some of</p> <p>22 which relate to diversion control</p> <p>23 and some that do not, some that</p> <p>24 relate to things that are unique</p>
<p style="text-align: right;">Page 147</p> <p>1 that we did do some work in that</p> <p>2 area relative to RPICs,</p> <p>3 specifically around updating</p> <p>4 training and testing.</p> <p>5 BY MR. PIFKO:</p> <p>6 Q. I've got two questions for</p> <p>7 you after that.</p> <p>8 This RPIC program, or the</p> <p>9 idea of having a responsible party in</p> <p>10 charge to review orders that exceeded the</p> <p>11 company's parameters, do you know when</p> <p>12 that was first instituted?</p> <p>13 A. I do not precisely know.</p> <p>14 Q. Was that a system that was</p> <p>15 in place when you joined the company?</p> <p>16 MR. NICHOLAS: Objection.</p> <p>17 Scope.</p> <p>18 THE WITNESS: I believe it</p> <p>19 was in place.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. Did you take any action to</p> <p>22 attempt to improve the policies and</p> <p>23 procedures concerning reviewing orders</p> <p>24 and training the distribution centers in</p>	<p style="text-align: right;">Page 149</p> <p>1 to the distribution centers.</p> <p>2 And so the answer to your</p> <p>3 question, did I make changes to</p> <p>4 policies and procedures as a</p> <p>5 result of this document is no.</p> <p>6 Did I make changes to</p> <p>7 policies and procedures? Yes, as</p> <p>8 a -- which was part of my overall</p> <p>9 work that I performed after I</p> <p>10 arrived at the company, including</p> <p>11 in this area of responsible</p> <p>12 persons in charge; continued to</p> <p>13 make changes in that area up until</p> <p>14 even recently.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. Do you update your</p> <p>17 discussion of making changes to the</p> <p>18 company's policies and procedures, you</p> <p>19 did that in 2016?</p> <p>20 MR. NICHOLAS: Object to the</p> <p>21 form.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. You said -- I think that's</p> <p>24 what you said.</p>

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1 A. To my recollection, they
2 were published in 2016, if I have my
3 timing -- if I have my timing correct.
4 Q. Did you implement those
5 changes in response to any legal
6 enforcement action from the Department of
7 Justice/Drug Enforcement Administration?
8 MR. NICHOLAS: Ob --
9 THE WITNESS: No.
10 MR. NICHOLAS: Well, okay.
11 THE WITNESS: Sorry.
12 BY MR. PIFKO:
13 Q. Did you implement those
14 changes in response to any changes in The
15 Controlled Substances Act?
16 MR. NICHOLAS: Object to the
17 form.
18 THE WITNESS: I'm not
19 familiar with any changes in The
20 Controlled Substances Act.
21 BY MR. PIFKO:
22 Q. There were no changes, so
23 you didn't make any changes as a result
24 of such changes; is that what you're

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1 trying to say?
2 MR. NICHOLAS: Object to the
3 form.
4 THE WITNESS: I am not
5 familiar with any changes, and I
6 didn't make any changes
7 specifically related to The
8 Controlled Substance Act.
9 BY MR. PIFKO:
10 Q. Did you identify -- in
11 developing the changes that were
12 implemented in 2016, did you identify any
13 deficiencies with respect to the
14 company's policies and procedures prior
15 to that time?
16 MR. NICHOLAS: Object to the
17 form. Outside the scope.
18 THE WITNESS: Again, in
19 putting this discussion in
20 context, because we're reviewing
21 this document, and I joined the
22 company in 2014 and after joining
23 the company, engaged in a review
24 of the overall program, all

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1 aspects of the program, which
2 includes policies and procedures.
3 And based upon that review,
4 we made changes. And were the
5 changes as a result of
6 deficiencies? No. The changes
7 were a result of my view on areas
8 where we could make improvements.
9 And that's a process we continue
10 and that I continue.
11 It's an evolution. And I
12 think that probably the regulators
13 expect us, with a compliance
14 program, to constantly evaluate
15 what we're doing and how we're
16 doing it.
17 And so I guess to put the
18 discussion around policies and
19 procedures in context, it was
20 not -- of course I'm aware of this
21 document, I'm aware of the content
22 of the document. Obviously, I
23 disagree with some of the
24 conclusions in the document.

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1 All that aside, I conducted
2 my own review and we made changes
3 to the program.
4 BY MR. PIFKO:
5 Q. I'm going to hand you a
6 document that goes with this.
7 - - -
8 (Whereupon,
9 AmerisourceBergen-May Exhibit-5,
10 ABDCMDL 00250024-063, was marked
11 for identification.)
12 - - -
13 BY MR. PIFKO:
14 Q. I'm handing you what is
15 marked as Exhibit-5.
16 A. Thank you.
17 Q. For the record, it's a
18 document Bates labeled ABDCMDL 00250024
19 through 250063.
20 Let me know when you're done
21 reviewing the document.
22 A. I'm done.
23 Q. Have you seen this before?
24 A. I have.

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1 Q. Do you know what this is?
2 A. Again, it's a related
3 report, findings matrix, related to the
4 report composed by FTI.
5 Q. I'll represent to you that
6 the electronic data that accompanies this
7 reflects that you were the custodian of
8 this document and that its date was
9 September 2nd, 2015.
10 Does that sound right?
11 A. I've seen the document.
12 I've had the document in my possession,
13 so that sounds right.
14 Q. Did you work with FTI on
15 this matrix?
16 MR. NICHOLAS: Object to the
17 form.
18 THE WITNESS: I was provided
19 the matrix. In terms of the
20 content of the matrix, I did
21 not -- I did not compose this
22 content. Presumably, it's
23 composed by FTI.
24 BY MR. PIFKO:

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1 Q. And just to be clear, can
2 you tell me what this is?
3 A. So I'm going to rely upon
4 the title up top, CSRA Process Review
5 Findings Matrix.
6 It's a matrix of findings
7 and observations and potential gaps and
8 risks.
9 Q. And I'll represent to you
10 that the file name for this document,
11 it's a Word document, and it's 8.17.15
12 FTI Findings Matrix_V4.
13 Does that refresh your
14 recollection about what this document is?
15 A. The title that you just
16 recited doesn't help me at all. I mean,
17 I've seen the document. The title --
18 Q. Well, let's look at this
19 first page here --
20 A. Sure.
21 Q. -- ABDCMDL 00250024.
22 It says -- for this
23 particular row of the matrix, it says
24 it's assigned to David May.

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1 That's you, correct?
2 A. Yes.
3 Q. You see that part?
4 A. I do.
5 Q. Findings and observations.
6 It says, There are inconsistencies with
7 respect to who is reviewing and
8 adjudicating orders held by the OMP at
9 the distribution center. At some
10 facilities, it is the warehouse managers
11 and supervisors; at others, it is the
12 cage and vault clerks or the compliance
13 clerks; and at others, it is the data
14 process team.
15 Do you see that?
16 A. I do.
17 Q. Then it says, Gaps and
18 risks. One of the gaps and risks is
19 regulatory obligations related to
20 diversion control.
21 Do you see that?
22 A. I do.
23 Q. Did you understand that FTI
24 had identified a gap and risk being

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1 regulatory obligations related to
2 diversion control?
3 MR. NICHOLAS: Object to the
4 form.
5 THE WITNESS: Again, and
6 I'll go back and mirror my
7 comments from the previous
8 document.
9 FTI did a cursory review of
10 our distribution centers over a
11 short period of time, and they
12 established -- or they composed
13 certain findings and observations
14 and identified potential gaps and
15 risks.
16 As I stated in the
17 discussion of the previous
18 document, I disagree with this
19 finding. And as of the
20 composition of this report, no
21 further action required, that was
22 because I disagreed with the
23 finding.
24 As I said, there were RPICs

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1 that were assigned at the
 2 distribution center that were
 3 trained to review orders. The
 4 fact that at some distribution
 5 centers they occupied different
 6 roles, they all occupied different
 7 roles, but they were still
 8 assigned as RPICs and were trained
 9 so.
 10 So, again, my understanding
 11 of how the program was working,
 12 and I was involved with the
 13 program day in and day out, versus
 14 the consulting company's view of
 15 the distribution centers in their
 16 opinions, and so I concluded that
 17 there was consistency. There was
 18 not a problem.
 19 That said, advancing down
 20 the road somewhat, I did
 21 provide -- or we did create
 22 additional training programs for
 23 our RPICs and testing materials to
 24 solidify some of that training.

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1 And we've made other changes to
 2 the RPICs, some of those very
 3 recent.
 4 - - -
 5 (Whereupon,
 6 AmerisourceBergen-May Exhibit-6,
 7 ABDCMDL 00158544, was marked for
 8 identification.)
 9 - - -
 10 BY MR. PIFKO:
 11 Q. I'm handing you what is
 12 marked as Exhibit-6.
 13 For the record, it's a
 14 one-page document, ABDCMDL 00158544.
 15 It's a document -- it's an e-mail from
 16 you to Steve Mays, Eric Cherveney, Chris
 17 Zimmerman, dated July 23rd, 2015.
 18 Take a minute to review it
 19 and let me know when you're done.
 20 A. Sure.
 21 Q. Have you seen this document
 22 before?
 23 A. It was an e-mail, so I have,
 24 yes.

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1 Q. When is the last time you
 2 think you saw it?
 3 A. Probably around July 23rd.
 4 Q. When you sent it?
 5 A. Yes.
 6 Q. Do you recall sending this
 7 document -- sending this e-mail?
 8 A. I recall the content of this
 9 document.
 10 Q. Is this a true and correct
 11 copy of the e-mail you sent?
 12 A. Yes.
 13 Q. It says here, Steve, early
 14 on in the process of organizing and
 15 developing future communications relative
 16 to customer OMP inquiries (think, where
 17 is my order) we learned that there were
 18 not uniform practices that were being
 19 followed among the different compliance
 20 managers. For example, at some
 21 distribution centers, the compliance
 22 managers were actively communicating with
 23 customers when orders were held or
 24 cancelled due to OMP, while others were

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1 not. None of this was considered
 2 negative by me except for the fact that
 3 we didn't have uniform practices in
 4 place.
 5 Do you see that?
 6 A. I do.
 7 Q. Do you recall being
 8 concerned about a lack of uniform
 9 practices with respect to this issue at
 10 the distribution centers?
 11 MR. NICHOLAS: Object to the
 12 form.
 13 THE WITNESS: So I guess in
 14 answering your question in the
 15 context of the earlier document
 16 that you just provided me, the one
 17 immediately preceding this one,
 18 there's discussion around RPICs',
 19 responsible persons in charge, at
 20 the distribution centers,
 21 inconsistencies.
 22 This topic here is in no
 23 way, form, related to this
 24 discussion. Here, the discussion

<p style="text-align: right;">Page 162</p> <p>1 concerns compliance managers. 2 They are -- it's a different role. 3 We have a compliance manager at 4 each and every one of our 5 distribution centers. And the 6 issue here concerned 7 communications with customers 8 around OMP. 9 So if, for instance, a 10 customer had a question about an 11 order that was not showing up, at 12 that time, there was different 13 communication that was happening, 14 some from the distribution center, 15 some through customer care folks. 16 But if I'm correct in your 17 question -- where you're going 18 with the question, is that this is 19 a completely different set of 20 facts. 21 BY MR. PIFKO: 22 Q. I'm just asking if you were 23 concerned about the lack of uniform 24 practices occurring at the distribution</p>	<p style="text-align: right;">Page 164</p> <p>1 MR. NICHOLAS: Object to the 2 form. 3 THE WITNESS: I think, in 4 terms of this specific issue that 5 we just discussed, customer 6 communications, it's important 7 that it's uniform. I think, 8 generally speaking, having 9 training that's consistent across 10 the distribution centers for 11 personnel engaged in order 12 monitoring is important. And so 13 to that extent -- to that extent, 14 we have that consistency. 15 BY MR. PIFKO: 16 Q. Let's go back to the matrix. 17 MR. PIFKO: Sorry, which 18 exhibit is that? 19 MR. CLUFF: Five. 20 BY MR. PIFKO: 21 Q. Let's go back to Exhibit-5. 22 Turn back to the second page -- going 23 back to the first page. 24 On the bottom here it says,</p>
<p style="text-align: right;">Page 163</p> <p>1 centers? 2 MR. NICHOLAS: Object to the 3 form. 4 THE WITNESS: So to your 5 very specific question, you're 6 referring to this particular issue 7 here, in terms of who would field 8 a customer question? So we're not 9 discussing the prior document? 10 BY MR. PIFKO: 11 Q. I'm asking you about this 12 exhibit, right. 13 A. So this exhibit, I thought 14 that we needed a uniform process for 15 responding to our customer inquiries 16 about orders. And that was the purpose 17 of this. 18 And we actually did address 19 this issue relative to customer 20 communications, where it is now uniform. 21 Q. Do you believe that the 22 practices with respect to the order 23 monitoring program at the distribution 24 center should be uniform?</p>	<p style="text-align: right;">Page 165</p> <p>1 Discussion notes, 1, no further action 2 required. 3 Do you see that? 4 A. I do. 5 Q. Is that a conclusion that 6 you reached with respect to this issue on 7 the first page? 8 MR. NICHOLAS: Object to the 9 form. 10 THE WITNESS: I think I was 11 involved in the process of 12 deciding what actions would be 13 taken. And so I would have been 14 involved in some of this feedback. 15 Ultimately, who decided 16 about the action, I could make a 17 recommendation. At least my 18 recommendation at the time was 19 that there was consistency. 20 How is that? 21 BY MR. PIFKO: 22 Q. In the recommendation 23 section on the right of the first page, 24 in that column, the second paragraph</p>

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1 says, In theory, the first-line reviewer
2 should not be within CSRA because they
3 are responsible for auditing the process.
4 Do you see that?
5 A. I do.
6 Q. Do you agree with that
7 conclusion?
8 MR. NICHOLAS: Object to the
9 form.
10 THE WITNESS: I'm not sure I
11 understand the context of this.
12 When they say CSRA would be
13 responsible for the auditing of
14 the process, I'm not sure if
15 they're talking about the OMP
16 process here. It's a little bit
17 unclear to me, this statement.
18 BY MR. PIFKO:
19 Q. What about the idea that if
20 the CSRA people are responsible for
21 ensuring compliance with the order
22 monitoring program, should they be the
23 same ones performing the reviews?
24 A. Again --

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1 MR. NICHOLAS: Object to the
2 form.
3 THE WITNESS: Excuse me.
4 Again, I think that here,
5 within corporate CSRA, we have a
6 team that's assigned to review
7 orders. And so this process --
8 this matrix and this process is
9 specifically referring to those
10 processes we have at our
11 distribution centers.
12 And the fact that -- again,
13 I'm not completely clear in terms
14 of the context here, but RPICs
15 could have been drawn within the
16 compliance team. And, again, I'm
17 making a little bit of a -- of an
18 assumption there.
19 So I really can't speak
20 to -- I'm really not sure that,
21 number one, I understand the
22 statement.
23 And, number two, program
24 design current day, this isn't an

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1 issue.
2 BY MR. PIFKO:
3 Q. It says, after that,
4 Ultimately, this responsibility should
5 fall to a salaried employee due to the
6 importance of the function.
7 Do you see that?
8 A. I do.
9 Q. At this time, the
10 distribution center order monitoring
11 process review was not being handled by
12 salaried people?
13 MR. NICHOLAS: Object to the
14 form.
15 THE WITNESS: I cannot say
16 definitively if all of the RPICs,
17 that's what we're talking about,
18 if the RPICs was salary or
19 non-salary, was it a combination
20 of salary and non-salary. I just
21 don't have that information. I
22 guess that's number one.
23 And, number two, I don't
24 necessarily agree with the

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1 conclusion that you cannot have a
2 trained hourly person to review
3 orders. I think that we can have
4 a trained hourly person to review
5 orders.
6 BY MR. PIFKO:
7 Q. Let's go to the next page.
8 Findings and observation.
9 Again, this is a thing
10 that's assigned to you. Do you see that?
11 You agree?
12 A. Yes.
13 Q. For the record, 25055.
14 Findings and observation column.
15 It says, There is currently
16 a lack of visibility to the process and
17 rationale for adjudicating orders held
18 for review. While both the corporate and
19 distribution center personnel reviewing
20 orders provide comments, there is no
21 standard set of defined reasons to
22 support those decisions.
23 Do you see that?
24 A. I do.

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<p>1 Q. Do you have an understanding 2 of what that finding and observation was 3 about?</p> <p>4 MR. NICHOLAS: Object to the 5 form.</p> <p>6 THE WITNESS: So, again, I 7 think the focus here, if my 8 recollection is correct, was on 9 the distribution center order 10 process. And I believe that's the 11 process that they're referring to.</p> <p>12 As we had it, there were two 13 possibilities for reviewing 14 orders. Orders could be reviewed 15 at the distribution center level 16 or at the corporate level, 17 depending upon the circumstances.</p> <p>18 And so I assume that's what 19 this is referring to.</p> <p>20 BY MR. PIFKO:</p> <p>21 Q. Do you disagree that there 22 was no set of defined reasons to support 23 the decision with respect to the 24 rationale for adjudicating orders for</p>	<p>1 precisely.</p> <p>2 But in terms of your 3 question about a standard set of 4 reasons to support, we did have 5 training that we provided to the 6 RPICs in their review of orders.</p> <p>7 BY MR. PIFKO:</p> <p>8 Q. It says Gaps and risks here. 9 Again, regulatory obligations related to 10 diversion control.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Do you understand the 14 connection between having a defined set 15 of reasons for adjudicating orders held 16 for review and the company's regulatory 17 obligations related to diversion control?</p> <p>18 MR. NICHOLAS: Object to the 19 form. Object to the scope.</p> <p>20 THE WITNESS: So, again, I 21 would say going back to the 22 finding and observation, I 23 disagree. And when it says gaps 24 and risk, I think, my</p>
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<p>1 review?</p> <p>2 MR. NICHOLAS: Object to the 3 form.</p> <p>4 THE WITNESS: I disagree 5 with that.</p> <p>6 And I guess I'll refer back 7 down to now, Notes, Number 1, no 8 further action required. There is 9 complete visibility in the 10 process, training and rationale.</p> <p>11 I think that -- again, I 12 refer to further documentation 13 exists within the policies and 14 procedures. There was a time 15 where we made changes to the RPIC 16 monitoring at the distribution 17 center level.</p> <p>18 In terms of the specific 19 finding, I disagree and -- but, as 20 you read down further, there were 21 things that we did later, in terms 22 of actions that we took related to 23 some of this. It's not entirely 24 clear that it all is matching up</p>	<p>1 understanding of how this matrix 2 works, these are potential gaps 3 and risks.</p> <p>4 Any gaps and risks that I 5 was aware of, if any, I would have 6 addressed. And at this time, I 7 didn't see a problem with how we 8 were doing things at the 9 distribution centers; with the 10 caveat being we did go in and do 11 additional training, as I 12 mentioned in our previous 13 discussion.</p> <p>14 BY MR. PIFKO:</p> <p>15 Q. Do you know what the time 16 frame was for FTI's review?</p> <p>17 MR. NICHOLAS: Asked and 18 answered. Objection.</p> <p>19 THE WITNESS: Just a little 20 clarity on your question. The 21 time frame when this all occurred 22 or how much time they took to do 23 the review?</p> <p>24 BY MR. PIFKO:</p>

<p style="text-align: right;">Page 174</p> <p>1 Q. The time frame of what --</p> <p>2 what was the time frame of the practices</p> <p>3 and procedures that they were reviewing?</p> <p>4 MR. NICHOLAS: Object to the</p> <p>5 form. And scope.</p> <p>6 THE WITNESS: It would have</p> <p>7 been those that were in place at</p> <p>8 the time of the composition of</p> <p>9 this report, which I believe we</p> <p>10 said was during the August time</p> <p>11 frame of 2015.</p> <p>12 BY MR. PIFKO:</p> <p>13 Q. Looking at this page on</p> <p>14 250025, it's got other notes. And you</p> <p>15 mentioned that there were actions taken.</p> <p>16 You see here it says, To</p> <p>17 develop a more robust messaging system</p> <p>18 for the customer that would support</p> <p>19 decisions made regarding OMP.</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. Do you believe that there</p> <p>23 was a lack of robustness regarding this</p> <p>24 area?</p>	<p style="text-align: right;">Page 176</p> <p>1 procedures for how the order monitoring</p> <p>2 program functions, it can defeat the</p> <p>3 effectiveness of the program?</p> <p>4 MR. NICHOLAS: Object to the</p> <p>5 form. As well as scope. But</p> <p>6 certainly object to the form of</p> <p>7 that question.</p> <p>8 THE WITNESS: Again, you're</p> <p>9 asking me for a question that</p> <p>10 involves conjecture about</p> <p>11 releasing policies and procedures.</p> <p>12 I guess, with no other</p> <p>13 context, how would I respond is I</p> <p>14 think there's proprietary</p> <p>15 information regarding order</p> <p>16 monitoring that we would try to</p> <p>17 limit distribution to our</p> <p>18 customers. To the extent that</p> <p>19 policy and procedure revealed some</p> <p>20 specific proprietary information,</p> <p>21 that could be a concern.</p> <p>22 But, again, I have no</p> <p>23 context surrounding.</p> <p>24 BY MR. PIFKO:</p>
<p style="text-align: right;">Page 175</p> <p>1 MR. NICHOLAS: Object to the</p> <p>2 form.</p> <p>3 THE WITNESS: So, again, we</p> <p>4 reviewed the messaging system for</p> <p>5 the customer relative to OMP. But</p> <p>6 it had nothing to do with</p> <p>7 decisions regarding OMP, in terms</p> <p>8 of supporting decisions.</p> <p>9 The issue, as I know it,</p> <p>10 that we're discussing here about</p> <p>11 messaging involved situations</p> <p>12 where a customer's order would be</p> <p>13 held and the customer wouldn't</p> <p>14 know why. And that's what this</p> <p>15 refers to.</p> <p>16 It has nothing to do with</p> <p>17 supporting decisions. Why that</p> <p>18 reads like supporting decisions,</p> <p>19 I'm not sure. It's probably an</p> <p>20 oversight in the writing of the</p> <p>21 report.</p> <p>22 BY MR. PIFKO:</p> <p>23 Q. Do you believe that if the</p> <p>24 company discloses its policies and</p>	<p style="text-align: right;">Page 177</p> <p>1 Q. What I'm asking you is, just</p> <p>2 simply, if people know how the program</p> <p>3 works, do you think that they can adjust</p> <p>4 their activity to circumvent the program?</p> <p>5 MR. NICHOLAS: Object to the</p> <p>6 form.</p> <p>7 THE WITNESS: Again, it's a</p> <p>8 question that involves conjecture.</p> <p>9 If something exists, would a</p> <p>10 customer act this way. I just</p> <p>11 can't respond to that.</p> <p>12 I don't know what the</p> <p>13 customer would do based upon</p> <p>14 conjecture. I have no idea.</p> <p>15 BY MR. PIFKO:</p> <p>16 Q. In designing the OMP</p> <p>17 program, do you think it's necessary to</p> <p>18 maintain some degree of confidentiality</p> <p>19 with respect to how the program</p> <p>20 functions?</p> <p>21 A. I do.</p> <p>22 Q. And why is that?</p> <p>23 A. I think that -- I think that</p> <p>24 the regulator would have that expectation</p>

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1 that we would try to protect some
 2 proprietary information. If we had
 3 customers that wanted to defeat our
 4 programs for nefarious purposes, we
 5 certainly don't want to provide the
 6 information to them that would enable
 7 them to do that, to the extent possible
 8 that we can prevent it.

9 Q. I'm just going to hand you
 10 one more document, and we can talk about
 11 that and then take a lunch break.

12 - - -

13 (Whereupon,
 14 AmerisourceBergen-May Exhibit-7
 15 ABDCMDL 00168453-455, was marked
 16 for identification.)

17 - - -

18 BY MR. PIFKO:

19 Q. This is Exhibit-7. Take a
 20 moment to review that and let me know
 21 when you're done.

22 For the record, it's some
 23 e-mails, Bates labeled ABDCMDL 00168453
 24 through 455.

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1 And I really just want to
 2 ask you about the e-mail you wrote in the
 3 middle of the page of the first page of
 4 the document.

5 A. Sure.

6 Q. It states --

7 MR. NICHOLAS: Hold on. Let
 8 him complete his review of the
 9 entire document first.

10 THE WITNESS: Okay.

11 BY MR. PIFKO:

12 Q. It states here on the first
 13 page, We just want to avoid any sharing
 14 of information that may make it to the
 15 customers that may result in manipulation
 16 of the program by the customers.

17 Do you see that?

18 A. Yes.

19 Q. Do you agree with that?

20 A. That's what I stated in my
 21 previous response.

22 Q. And that was -- so you agree
 23 with that, yes?

24 A. To the extent that, yes, it

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1 agrees with my previous response, in
 2 terms of which was, perhaps, a little bit
 3 different; if you want to read my
 4 previous response, I think I added
 5 additional information.

6 Q. That was going to be my next
 7 question.

8 Was this consistent with
 9 what you just testified to that you don't
 10 want any aspects of the program to be
 11 disclosed that would allow it to be
 12 manipulated by customers, agree?

13 A. Again, there's going to be
 14 aspects of the program that, by the very
 15 nature of what we do, our customers are
 16 going to have to know. They're going to
 17 have to know that their orders are
 18 subject to some sort of review by us.

19 They are going to have to know that some
 20 orders will be held and some orders will
 21 be released.

22 I don't believe our
 23 customers need to know some of the
 24 proprietary information that's sensitive

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1 around the program. And, again, the
 2 reason being is, if there was a customer
 3 that wanted to defeat it, we want -- to
 4 the extent possible that we can prevent
 5 that from happening, we want to do that.

6 Q. In that regard, do you think
 7 it's appropriate to allow customers to
 8 know what their thresholds are?

9 MR. NICHOLAS: Object to the
 10 form. Scope as well.

11 THE WITNESS: So, again, in
 12 terms of thresholds, under the
 13 program that we administer now, we
 14 refer to those as parameters.

15 I think that it would be
 16 more appropriate if customers did
 17 not know what their former
 18 thresholds were or what their
 19 current parameters are, yes.

20 MR. PIFKO: Okay. We can
 21 take a lunch break. Thank you.

22 VIDEO TECHNICIAN: Going off
 23 the record. 12:24 p.m.

24 - - -

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1 (Whereupon, a luncheon
2 recess was taken.)
3 - - -
4 VIDEO TECHNICIAN: We're
5 back on the record. The time is
6 1:06 p.m.
7 BY MR. PIFKO
8 Q. I'm handing you what's
9 marked as Exhibit-9. I skipped one, I'll
10 come back to it.
11 - - -
12 (Whereupon,
13 AmerisourceBergen-May Exhibit-9
14 ABDCMDL 00216332-33, was marked
15 for identification.)
16 - - -
17 BY MR. PIFKO:
18 Q. Take a moment to review that
19 and let me know when you're done.
20 For the record, it's a
21 document Bates labeled ABDCMDL 00216232
22 through 33.
23 Are you ready?
24 A. Yes.

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1 Q. Have you seen this document
2 before?
3 A. I have.
4 Q. Do you know what this is?
5 A. It's an e-mail from Caroline
6 Conneely to myself and others.
7 Q. What was the last time you
8 saw this?
9 A. Date of the e-mail, March
10 15th, 2016.
11 Q. Is this a true and correct
12 copy of the communications reflected in
13 this e-mail?
14 A. Yes.
15 Q. So this is an e-mail, on the
16 first page, it's from Caroline Conneely,
17 dated Tuesday, March 15th, 2016, to you,
18 Eric Cherveney, Sharon Hartman. The
19 subject is OMP reason codes.
20 The first question, Caroline
21 Conneely, she's the consultant who
22 prepared that report?
23 MR. NICHOLAS: Object to the
24 form.

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1 THE WITNESS: Could you
2 refer me to the report? The FTI
3 Consulting report?
4 BY MR. PIFKO:
5 Q. Correct. Exhibit-4 to be --
6 A. I believe she prepared that
7 report, yes.
8 Q. This is later -- as we
9 discussed, that report was dated in 2015.
10 Do you recall?
11 A. Yes.
12 Q. So now, later, in March
13 2016, she's writing you. And she says,
14 One of the things we've been discussing
15 through the course of the OMP
16 enhancements effort is better consistency
17 and transparency to the rationale for the
18 decisions related to orders held for
19 review.
20 Do you see that?
21 A. I do.
22 Q. So you were discussing
23 enhancements to the OMP program with Ms.
24 Conneely in 2016?

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1 A. Yes.
2 Q. What was the nature of your
3 discussions with her?
4 A. I had many and numerous
5 discussions with Caroline Conneely, from
6 FTI, relative to the order monitoring
7 program and the development of the
8 enhanced program. Those conversations
9 took place over the course of several
10 months.
11 So it would be difficult to
12 provide any specific commentary around
13 what all of those discussions included.
14 I'm happy to respond to questions
15 relative to this particular discussion.
16 Q. Here she's talking about
17 providing consistency with respect to the
18 reasons for identifying orders held for
19 review, agree?
20 MR. NICHOLAS: Object to the
21 form.
22 THE WITNESS: Actually, as
23 she states in her e-mail, she uses
24 the word "better" consistency.

<p style="text-align: right;">Page 186</p> <p>1 So this is a discussion 2 around documenting rationale; to 3 be very specific, documenting 4 around rationale relative to the 5 decisions that we make within the 6 program. 7 BY MR PIFKO: 8 Q. Prior to this time, was 9 there any documentation of the rationale 10 with respect to decisions related to 11 orders held for review? 12 MR. NICHOLAS: Object to the 13 form. Scope. 14 THE WITNESS: What would be 15 the defined time period? 16 BY MR PIFKO: 17 Q. Well, this is dated March 18 15, 2016. 19 So I'm asking, are you aware 20 if, before this time, there was any 21 documentation regarding the decisions 22 related to orders held for review? 23 MR. NICHOLAS: Same 24 objection.</p>	<p style="text-align: right;">Page 188</p> <p>1 be no -- there may or may not be any 2 documentation as to why; is that correct? 3 Prior to this time? 4 MR. NICHOLAS: Object to the 5 form. And the scope. 6 THE WITNESS: There may or 7 may not be notes relative to the 8 decision-making of individual 9 order reviews. 10 BY MR PIFKO: 11 Q. So at this point, you're 12 still discussing implementing a 13 procedure, specifically they're talking 14 about putting a drop-down list of reason 15 codes. 16 Do you see that? 17 A. I do. 18 Q. At this time, there still 19 was no set procedure; is that correct? 20 MR. NICHOLAS: Object to the 21 form. And the scope. 22 THE WITNESS: I don't recall 23 precisely when we instituted the 24 requirement, but it would have</p>
<p style="text-align: right;">Page 187</p> <p>1 THE WITNESS: So there was 2 the ability to document 3 decision-making via some -- via -- 4 including notes relative to the 5 orders. And that existed prior to 6 this discussion here. So there 7 was the capability to provide 8 notes. 9 BY MR PIFKO: 10 Q. Based on your understanding 11 of the system, do you know if that -- 12 those notes fields you're talking about, 13 you used the word "capability," were 14 those notes fields used as a requirement 15 for people making decisions regarding 16 orders held for review? 17 MR. NICHOLAS: Object to the 18 form. And scope. 19 THE WITNESS: To the best of 20 my recollection, it was not a 21 requirement. 22 BY MR PIFKO: 23 Q. And so there are orders that 24 would be held or released and there may</p>	<p style="text-align: right;">Page 189</p> <p>1 coincided with the development of 2 the drop-down codes, which is what 3 we're discussing and working on 4 here at this time period. So it 5 would have been -- the requirement 6 would have been instituted after 7 the capability was built, without 8 knowing the precise dates. 9 BY MR PIFKO: 10 Q. Is it your understanding 11 that there was -- the capability was 12 being added on or around this time, in 13 the first quarter of 2016? 14 A. Yes. I'm sorry, with one -- 15 again, with the caveat, I think we always 16 had the ability to insert notes. The 17 capability that was being developed was 18 this notion of developing codes within 19 the SAP structure. 20 Q. So with respect to 21 transparency to the rationale for the 22 decisions related to orders for review, 23 she says, This is critical not just to 24 the operationalization -- I don't know if</p>

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1 that's a word.
2 A. Operationalization.
3 Q. -- operationalization of the
4 methodology changes but also to the
5 ability to explain those decisions,
6 should they be questioned at some point
7 in the future.
8 Do you see that?
9 A. I do.
10 Q. Do you agree with her
11 statement?
12 MR. NICHOLAS: Object to the
13 form.
14 THE WITNESS: In terms of
15 operationalizing the methodology,
16 it wasn't required to
17 operationalize the methodology.
18 The methodology had already been
19 put in place and was being used.
20 So I'm not sure, in the
21 context of this e-mail, what she
22 meant by that.
23 In terms of the ability to
24 explain decisions should they be

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1 questioned, her view and her
2 opinion aside, my own view was
3 that we needed more documentation
4 around that issue.
5 BY MR PIFKO:
6 Q. Because if you don't have
7 documentation, you don't know why an
8 order was released or not, correct?
9 MR. NICHOLAS: Object to the
10 form.
11 THE WITNESS: So that's not
12 correct. What is correct --
13 because there could be rationale,
14 it's just not properly documented.
15 So my effort here was to
16 improve our efforts around
17 documentation.
18 BY MR PIFKO:
19 Q. I didn't ask if there was
20 any rationale.
21 I asked -- I said if there
22 was no documentation, you don't know what
23 the rationale is for why an order was
24 released, correct?

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1 MR. NICHOLAS: Object to the
2 form.
3 THE WITNESS: So perhaps you
4 can ask the question again,
5 because how you just repeated it,
6 perhaps I misunderstood it. So
7 maybe you can ask it again.
8 BY MR PIFKO:
9 Q. No problem.
10 So I'm just saying, absent
11 documentation in the system for why an
12 order is released, you don't know why
13 it's released, correct?
14 MR. NICHOLAS: Object to the
15 form.
16 THE WITNESS: So absent
17 documentation, there still may be
18 the possibility, I suppose,
19 through conversations with folks
20 that reviewed orders, the ability
21 to determine that information.
22 But bottom line, I also
23 believe that better documentation
24 was required.

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1 BY MR PIFKO:
2 Q. So what you're saying is,
3 other than talking to someone, you'd have
4 no way of knowing why an order was
5 released, if there's no documentation,
6 agree?
7 MR. NICHOLAS: Object to the
8 form.
9 THE WITNESS: So no. I
10 mentioned that there was also the
11 notes capability. And in some
12 cases, there would be notes around
13 that rationalization.
14 BY MR PIFKO:
15 Q. Okay. Aside from the notes
16 and talking to someone, you'd have no way
17 of knowing what the rationalization was
18 for making decisions related to
19 whether -- to release an order, agree?
20 MR. NICHOLAS: Object to the
21 form.
22 THE WITNESS: I would agree
23 that it would be difficult to
24 determine, absent notes and absent

<p style="text-align: right;">Page 194</p> <p>1 conversations, specific rationale 2 relative to order adjudication. 3 BY MR PIFKO: 4 Q. She says, Dave, would you 5 feel comfortable explaining orders to the 6 regulators based on this level of detail 7 (recognizing there would also be comments 8 available to expand upon individual 9 circumstances). 10 It appears she's asking, 11 based on the drop-down menu, if you would 12 be comfortable explaining orders based on 13 that kind of detail. 14 Is that what you understand 15 she's asking here? 16 A. Based upon the context of 17 this e-mail, I would agree that she's 18 asking, would I feel comfortable 19 explaining orders with the level of 20 detail that is being contemplated in the 21 drop-down menus, yes. 22 Q. And what is your answer? 23 Are you comfortable with that level of 24 detail?</p>	<p style="text-align: right;">Page 196</p> <p>1 BY MR PIFKO: 2 Q. I'm handing you what is 3 marked as Exhibit-8. 4 Please take a moment to 5 review that and let me know when you're 6 ready. 7 The document is Bates 8 labeled ABDCMDL 00158342. The electronic 9 data accompanying the document reflects 10 that you were the custodian and that it's 11 dated July 2nd, 2014. 12 And the file name for the 13 document is 2014 Thought Spot Diversion 14 Control Training PowerPoint. 15 MR. NICHOLAS: Just before 16 we go into questioning on this 17 document, a reminder, or whatever 18 you want to call it, that the 19 witness is designated as a 20 30(b)(6) deponent for the period 21 of time from 2015 to May of 2018. 22 So to the extent we're 23 embarking on questions about prior 24 information or prior materials,</p>
<p style="text-align: right;">Page 195</p> <p>1 A. Absolutely. And that's why 2 we proceeded in implementing those 3 drop-down menus. 4 Q. I want to explore the scope 5 of some privilege assertions that were 6 made with respect to FTI's work. 7 Do you know if there were 8 any projects that AmerisourceBergen 9 engaged FTI to work on that were not at 10 the direction of attorneys? 11 A. When I joined the company in 12 2014, FTI had already been engaged by 13 legal. All of the work that I did with 14 them was pursuant to that engagement 15 around OMP and diversion control. 16 There may be work that 17 they've done for the company that I'm not 18 aware of that I can't comment on. 19 - - - 20 (Whereupon, 21 AmerisourceBergen-May Exhibit-8, 22 ABDCMDL 00158342, was marked for 23 identification.) 24 - - -</p>	<p style="text-align: right;">Page 197</p> <p>1 he's testifying as -- in his 2 individual capacity. 3 BY MR PIFKO: 4 Q. Let me know when you're 5 ready to talk. 6 A. Thank you. 7 I'm ready. 8 Q. Do you recognize this 9 document? 10 A. I do. 11 Q. Can you tell me what this 12 is? 13 A. This is a PowerPoint 14 presentation that was put together for a 15 sales meeting, where I was doing some 16 training to our sales staff in the 17 beginning of August 2014. 18 Q. Is this a true and correct 19 copy of a presentation that you gave at 20 this conference? 21 A. Yes. 22 Q. It says the conference 23 occurred from July -- I'm looking at the 24 first page of the document -- from July</p>

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1 30th to August 2nd, 2014 at the MGM Grand
2 in Las Vegas; is that correct?
3 A. Correct.
4 Q. And you attended this
5 conference during that time period?
6 A. Yes.
7 Q. And what day was this
8 presented on?
9 A. I'm not sure at this time.
10 I'd have to consult my calendar.
11 Q. And the conference was held
12 at the MGM Grand casino in Las Vegas?
13 A. Yes.
14 Q. What's Thought Spot?
15 A. What is Thought Spot? It's
16 the name of the conference. It's where
17 we bring in many of our independent
18 retail pharmacy customers, together with
19 our community and specialty sales staff,
20 and they spend time together during the
21 conference.
22 Q. When was the last time you
23 saw this document?
24 A. I believe I saw this

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1 document last week. I reviewed several
2 PowerPoint presentations, I believe this
3 was among them, in preparation for today.
4 Q. Prior to that when was the
5 last time you saw this?
6 A. It would have been at the
7 time of presentation.
8 Q. So let's go to Page 6.
9 So we've got the slides
10 here, these are -- if we look just
11 generally at the format of the document.
12 At the top half of the page,
13 it's the slides that you presented at the
14 conference?
15 A. Yes.
16 Q. And then on the bottom are
17 notes that you made to yourself?
18 A. Yes.
19 Q. This slide is entitled,
20 National Abuse Facts, correct?
21 A. Yes.
22 Q. Your notes say, The
23 statistics overwhelmingly demonstrate
24 that we have a terrible prescription drug

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1 abuse problem in the U.S. and,
2 tragically, people are dying.
3 Do you see that?
4 A. I do.
5 Q. Do you agree with that?
6 A. Yes.
7 Q. What was the basis for that
8 conclusion that you wrote there that I
9 just read?
10 A. The statistics.
11 Q. Like the items referenced up
12 here, the 38,329 unintentional drug
13 overdose deaths in 2010?
14 A. Yes. And other data that I
15 was familiar with.
16 But these are two of the
17 statistics that would support that
18 statement.
19 Q. We talked, I believe, that
20 you joined AmerisourceBergen in 2014.
21 Do you remember the month?
22 A. I believe it was right
23 around the 1st of March, within a week.
24 Q. So this is only a few months

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1 after you had been at the company?
2 A. Based upon the dates here,
3 yes.
4 Q. At this time, did you have a
5 belief that members of the pharmaceutical
6 industry, be it manufacturers and/or
7 distributors, had any role in
8 contributing to the prescription drug
9 abuse problem in the U.S. that you
10 reference here?
11 MR. NICHOLAS: Object to the
12 form of the question. I'll
13 reiterate the scope objection as
14 well. But I object to the form of
15 the question.
16 THE WITNESS: At that time,
17 I have no specific memory of any
18 conclusions that I may have drawn
19 relative to the prescription drug
20 abuse problem.
21 BY MR PIFKO:
22 Q. Do you believe that we still
23 have a prescription drug problem in the
24 United States?

<p style="text-align: right;">Page 202</p> <p>1 A. I believe that we've made 2 great advancements in the last several 3 years. I still believe there is work to 4 be done. 5 Q. Have you heard the term 6 "opioid crisis"? 7 A. I have. 8 Q. Do you believe that we're 9 still in the opioid crisis? 10 A. I do. 11 Q. Do you presently have a view 12 as to whether manufacturers and 13 distributors of opioid products 14 contributed to the opioid crisis? 15 MR. NICHOLAS: Object to the 16 form. Outside the scope. 17 THE WITNESS: I don't have 18 an opinion relative to 19 manufacturers and distributors. 20 I can respond in terms of 21 AmerisourceBergen. And I do not 22 believe they contributed to the 23 opioid crisis. 24 BY MR PIFKO:</p>	<p style="text-align: right;">Page 204</p> <p>1 I know that 2 AmerisourceBergen delivers 3 medications every day to people 4 who need them, life-saving 5 medications, the majority of which 6 is non-controlled. 7 And in terms of the market 8 share of total medicine delivered, 9 non-controlled and controlled, 10 which is a much smaller aspect of 11 our business as a percentage, I'd 12 have to leave those specific 13 responses to somebody -- somebody 14 else that has that information. 15 BY MR PIFKO: 16 Q. So you believe that -- have 17 you heard the term the "three big three," 18 with respect to McKesson, Cardinal and 19 AmerisourceBergen, in terms of their role 20 as distributors in the pharmaceutical 21 industry in the United States? 22 MR. NICHOLAS: Object to the 23 form. 24 THE WITNESS: I've seen</p>
<p style="text-align: right;">Page 203</p> <p>1 Q. Do you believe that as a -- 2 let me back up. 3 Do you have a sense of what 4 market share of the United States 5 distribution of opioid products 6 AmerisourceBergen has presently? 7 MR. NICHOLAS: Objection. 8 Outside the scope. 9 THE WITNESS: I'm probably 10 not the best person to talk about 11 market share. 12 BY MR PIFKO: 13 Q. Have you previously heard 14 that AmerisourceBergen, Cardinal Health, 15 and McKesson have approximately 80 to 90 16 percent of the market share of 17 distribution of pharmaceuticals in the 18 United States? 19 MR. NICHOLAS: Objection. 20 Object to the form. Outside the 21 scope. 22 THE WITNESS: Again, I'm 23 probably not the best person to 24 talk about market share.</p>	<p style="text-align: right;">Page 205</p> <p>1 publications and documents that 2 contain that reference. 3 Specifically what those 4 publications are, I couldn't say. 5 BY MR PIFKO: 6 Q. Do you believe that as major 7 entities in the closed system of 8 distribution of controlled substances, 9 Cardinal, AmerisourceBergen and McKesson 10 have the ability to beneficially impact 11 the opioid crisis through their 12 practices? 13 MR. NICHOLAS: Object to the 14 form. Objection on scope as well. 15 THE WITNESS: You know, in 16 the context of your question, I 17 would say that every registrant 18 has the potential to have an 19 impact, large or small; 20 distributor, practitioner, 21 pharmacy, manufacturer. 22 And, again, my concern is 23 AmerisourceBergen and what we do 24 there every day to fulfill our</p>

<p style="text-align: right;">Page 206</p> <p>1 obligations. And that's what my 2 focus is. 3 BY MR PIFKO: 4 Q. Do you believe that 5 AmerisourceBergen has a responsibility to 6 take actions to reduce the impacts of the 7 opioid crisis? 8 MR. NICHOLAS: Objection to 9 the form. Objection as to scope 10 as well. 11 THE WITNESS: I believe that 12 AmerisourceBergen has various 13 requirements that are imposed upon 14 it, as a registrant, through the 15 laws and regulations. 16 BY MR PIFKO: 17 Q. Do you believe that by 18 preventing diversion AmerisourceBergen 19 can make a positive impact on the opioid 20 crisis? 21 MR. NICHOLAS: Object to the 22 form. Objection as to scope. 23 THE WITNESS: I think if 24 AmerisourceBergen fulfills its</p>	<p style="text-align: right;">Page 208</p> <p>1 do not have as a wholesale 2 distributor. 3 And generally speaking, I 4 think that if all registrants of 5 all types fulfill their legal 6 obligations, that would -- that 7 would have a positive impact. 8 BY MR PIFKO: 9 Q. On the opioid crisis? 10 A. On the opioid crisis. 11 MR. NICHOLAS: Object to the 12 form. 13 THE WITNESS: Yes. 14 BY MR PIFKO: 15 Q. Do you believe that by 16 following its obligation to prevent 17 diversion, AmerisourceBergen can prevent 18 opioid pills from falling into the hands 19 of the black markets? 20 MR. NICHOLAS: Objection as 21 to form. Objection as to scope. 22 THE WITNESS: So, again, you 23 know, you're asking now inserting 24 conjecture. And I have no</p>
<p style="text-align: right;">Page 207</p> <p>1 requirements under the 2 regulations, it will accomplish 3 what it's required to do. 4 BY MR PIFKO: 5 Q. And what is it required to 6 do? 7 MR. NICHOLAS: Object to the 8 form. Object -- let me start that 9 again. 10 Objection as to form. 11 Objection as to scope. 12 THE WITNESS: Again, as a 13 registrant and a wholesale 14 distributor, we have certain 15 requirements imposed upon us in 16 the closed system of distribution 17 that you've alluded to. 18 Within the closed system, 19 there are different requirements 20 based upon where you sit. The 21 practitioner certainly has a 22 different requirement, 23 establishing a patient/doctor 24 relationship, for example, that we</p>	<p style="text-align: right;">Page 209</p> <p>1 response to a set of facts that 2 aren't real. I can't -- I can't 3 respond to a question that's 4 conjecture. I can respond to a 5 question, you know, where there 6 are facts associated with the 7 question. 8 So as I said before, when it 9 comes to our regulatory 10 requirements at AmerisourceBergen, 11 we meet them. We're constantly 12 evaluating how our performance is 13 and how we're meeting them. We 14 are constantly evaluating things 15 that we could possibly do 16 differently to continuously 17 analyze the results of our work, 18 all in an effort to do everything 19 that we can to meet our 20 requirements. 21 BY MR PIFKO: 22 Q. Do you believe that one of 23 the things that you are striving to do, 24 as the senior-most person in the</p>

<p style="text-align: right;">Page 210</p> <p>1 diversion control department, is to 2 prevent pills from getting into illegal 3 markets? 4 MR. NICHOLAS: Objection as 5 to form. Objection as to scope. 6 THE WITNESS: Again, I view 7 my role, as the senior person over 8 our diversion control efforts, as 9 one to make sure that we, as a 10 company, day in and day out, 11 fulfill all of our legal 12 obligations. That's my number one 13 priority. 14 And when I come to work each 15 day, that's what I try to do. 16 BY MR PIFKO: 17 Q. In carrying out your duties 18 as the head of the diversion control 19 program for AmerisourceBergen, do you 20 believe that -- is it important to you to 21 prevent pills from falling into the hands 22 of someone who could suffer an overdose? 23 MR. NICHOLAS: Objection as 24 to form. Objection as to scope.</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. Is that the company's view, 2 too? 3 MR. NICHOLAS: Objection as 4 to form. Objection as to scope. 5 THE WITNESS: -- I think 6 that the company has stated 7 publicly that they recognize the 8 opioid abuse problem and want to 9 do everything they can to 10 contribute to solutions. 11 BY MR PIFKO: 12 Q. Let's go to Page 9 of this 13 document. 14 Are you there? 15 A. I am. 16 Q. It says, More recently, DEA 17 has shifted an increasingly large number 18 of their special agents who are 19 investigating criminal drug trafficking 20 organizations to newly created tactical 21 diversion squads. And part of their 22 mandate is to use their law enforcement 23 skills at developing criminal 24 investigations, which lead to indictments</p>
<p style="text-align: right;">Page 211</p> <p>1 THE WITNESS: Again, I think 2 I've been pretty clear in terms of 3 what I hope to accomplish and what 4 I believe to be my 5 responsibilities are at 6 AmerisourceBergen. 7 I'm happy to repeat those. 8 BY MR PIFKO: 9 Q. Do you hope to accomplish a 10 reduction of overdose deaths? Is that 11 something that you seek to accomplish? 12 MR. NICHOLAS: Objection as 13 to form. Objection as to scope. 14 THE WITNESS: Again, as I've 15 outlined, I think that there are 16 various requirements imposed upon 17 different registrants within the 18 system. And I think if, that, all 19 registrants concentrate on their 20 requirements and carry out those 21 duties, it will have a positive 22 impact on prescription drug abuse. 23 That's a personal view -- 24 BY MR PIFKO:</p>	<p style="text-align: right;">Page 213</p> <p>1 and arrests, of all DEA registrants that 2 are members of the closed system, 3 including manufacturers, distributors, 4 doctors, pharmacies. These criminal 5 charges may be brought against the 6 organizations themselves and/or the 7 organization's employees. 8 Do you see that? 9 A. I do. 10 Q. What was the basis of making 11 that statement? 12 MR. NICHOLAS: Object to the 13 form. 14 THE WITNESS: That statement 15 was made in the context of this 16 entire presentation. It was 17 intended to inform our sales 18 folks, educate our sales folks, in 19 a very general way, about facets 20 of diversion control and our 21 obligations. 22 So there's no specific 23 intent of this statement, other 24 than to say, this is part of the</p>

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1 regulatory environment, as well as
 2 these other things.
 3 BY MR PIFKO:
 4 Q. How did you know that there
 5 were these newly created tactical
 6 diversion squads?
 7 MR. NICHOLAS: Objection as
 8 to form. Objection as to scope.
 9 THE WITNESS: Through my
 10 work and experience at DEA. I
 11 oversaw one of these DEA tactical
 12 diversion squads.
 13 BY MR PIFKO:
 14 Q. You oversaw one of these
 15 tactical --
 16 A. Yes.
 17 Q. -- diversion squads?
 18 In what part of your career
 19 did you oversee one of these tactical --
 20 A. When I was in Atlanta.
 21 Q. What was the -- was the task
 22 of the tactical diversion squad
 23 consistent with what's reflected here?
 24 MR. NICHOLAS: Object to the

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1 form. Scope.
 2 THE WITNESS: Yes, generally
 3 speaking.
 4 BY MR PIFKO:
 5 Q. What were you seeking to do
 6 as part of that task force -- sorry,
 7 tactical diversion squad?
 8 MR. NICHOLAS: Object to the
 9 form. Object as to scope. And I
 10 just want to make it clear that
 11 the witness is not speaking as a
 12 representative of the DEA or
 13 purporting to represent any DEA
 14 positions.
 15 THE WITNESS: I'm sorry,
 16 what was the question?
 17 BY MR PIFKO:
 18 Q. I was asking what the
 19 purpose -- you said you ran one of these
 20 tactical diversion squads, correct?
 21 A. To be specific, I had a
 22 group supervisor who reported directly to
 23 me who was the direct supervisor of the
 24 tactical diversion squad.

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1 Q. What was the purpose of the
 2 tactical diversion squad that you
 3 oversaw?
 4 MR. NICHOLAS: Object as to
 5 form and scope. And with the same
 6 caveat that I just interposed a
 7 minute ago.
 8 Go ahead.
 9 THE WITNESS: And, again,
 10 beyond -- going beyond the
 11 description I've provided here, I
 12 probably would prefer not to talk
 13 about DEA operations that were
 14 ongoing at that time.
 15 BY MR PIFKO:
 16 Q. Well, you've disclosed it
 17 here.
 18 A. I've disclosed that general
 19 information there.
 20 Q. Did you oversee any efforts
 21 by the tactical diversion squad to
 22 investigate a manufacturer for diversion
 23 violations?
 24 MR. NICHOLAS: Object as to

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1 form. Object as to scope.
 2 Hold on one second.
 3 I'm going to instruct the
 4 witness not to answer, only so
 5 that -- well, I'll let you answer
 6 the question, and then we'll see
 7 if we need a break so that -- go
 8 ahead.
 9 MR PIFKO: To avoid this,
 10 I'm not going to ask you about any
 11 specifics, the identity of who you
 12 might have been targeting. I'm
 13 just asking you general questions
 14 right now.
 15 BY MR PIFKO:
 16 Q. And the specific question I
 17 asked you was whether you oversaw any
 18 efforts by the tactical diversion squad
 19 to investigate a manufacturer for
 20 diversion violations?
 21 MR. NICHOLAS: I'll permit
 22 him to answer as long as it
 23 doesn't implicate any restrictions
 24 that he has with regard to his

<p style="text-align: right;">Page 218</p> <p>1 prior position. That's my only 2 concern here. 3 THE WITNESS: I was not 4 involved in any investigations of 5 any manufacturers during that time 6 period. 7 BY MR PIFKO: 8 Q. How about distributors? 9 A. Same response. 10 Q. How about doctors? 11 A. I'm not going to comment 12 further on any other investigative 13 activity. 14 Q. I'm not asking you to 15 identify a doctor or identify a specific 16 defendant. 17 MR. NICHOLAS: I think what 18 we're hearing is that the witness 19 may be uncomfortable in terms of 20 his legal obligations and 21 limitations having come out of the 22 DEA. 23 So I'm going to -- I'm going 24 to suggest that you not try to</p>	<p style="text-align: right;">Page 220</p> <p>1 assert it, that's fine. But if we 2 have a dispute, I'm going to seek 3 to bring him back so that -- 4 MR. NICHOLAS: Unless you 5 represent the DEA, then I don't 6 think you really have a good feel 7 for this. 8 So in any event, I think we 9 should move on. 10 BY MR PIFKO: 11 Q. Just to be clear for the 12 record, you're unwilling, at this time, 13 to answer any further questions about 14 your oversight of any actions by the 15 tactical diversion squad, as mentioned in 16 this slide here? 17 MR. NICHOLAS: Hold it. 18 I'll object to the form of the 19 question. I'll instruct him not 20 to answer. He's not unwilling -- 21 he is or isn't unwilling, but I'm 22 instructing him not to answer at 23 this point. He does not have to 24 answer that question.</p>
<p style="text-align: right;">Page 219</p> <p>1 pursue this. Otherwise, I'm going 2 to have to instruct him not to 3 answer, I guess. 4 MR PIFKO: We can meet and 5 confer about it later, but I might 6 have to bring you back to ask 7 questions about this topic. 8 MR. NICHOLAS: About this 9 particular topic, you would bring 10 him back? Okay. You can go ahead 11 and try to do that. But for now, 12 let's move on. I think that's 13 kind of silly, but let's move on 14 because you're just putting him in 15 an awkward position for no 16 particular good reason. 17 MR PIFKO: Believe me, I 18 represent the city of Cleveland, 19 I'm familiar with the law 20 enforcement privileges. And I 21 don't think that I'm asking 22 anything that's violating a 23 privilege. 24 And if you're going to</p>	<p style="text-align: right;">Page 221</p> <p>1 BY MR PIFKO: 2 Q. Let's go to Slide 16 -- or 3 Page 16, it says Slide 17. 4 Are you there? 5 A. Yes, sir. 6 Q. Okay. It says, What's being 7 diverted? 8 Do you see that? 9 A. Yes. 10 Q. The biggest threat for 11 diversion is our opioids. 12 Do you see that? 13 A. Yes. 14 Q. Do you agree with that 15 statement? 16 MR. NICHOLAS: Object to the 17 form. 18 THE WITNESS: I agree. 19 BY MR PIFKO: 20 Q. You see here it says, So it 21 happens frequently that you will see 22 someone who was prescribed hydrocodone 23 following an injury or medical 24 intervention for legitimate medical</p>

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1 purposes but then continues to use and
2 abuse the drug long after the legitimate
3 medical need has passed.
4 Do you see that?
5 A. I do.
6 Q. Do you agree with that
7 statement?
8 A. I believe that could occur,
9 yes.
10 Q. Do you believe that in
11 trying to prevent diversion, you're
12 trying to prevent that from occurring?
13 MR. NICHOLAS: Object to the
14 form. Object as to scope as well.
15 THE WITNESS: So as a
16 wholesale distributor in the
17 environment in which we work and
18 the things that we can and cannot
19 do, I cannot, as a wholesale
20 distributor, prevent a
21 practitioner from continually
22 writing a hydrocodone prescription
23 for a patient who suffered an
24 injury a long time ago but

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1 continues to write those. There
2 is nothing -- I have no visibility
3 to that patient. I have no
4 visibility to that practitioner.
5 Likewise, I don't see that
6 patient when he walks through the
7 doors at the pharmacy and he
8 interacts with the pharmacist.
9 And I don't see the information
10 that the pharmacy has at their
11 disposal, the pharmacist, in terms
12 of the diagnostic code on that
13 prescription. Of course, there
14 are HIPAA concerns there as well.
15 So our role in the supply
16 chain is fairly limited. I can
17 monitor the orders being placed by
18 that pharmacy, and I can look for
19 orders that meet the definition of
20 suspicious. And if I find those,
21 I can report those to DEA. But to
22 make a connection between that
23 sort of work and me being able to
24 prevent overprescribing and

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1 potential misuse and abuse,
2 there's clearly things, as a
3 wholesale distributor, that we can
4 and cannot do.
5 And that clinical process
6 and that overprescribing, to the
7 extent that we can impact that by
8 identifying suspicious orders, we
9 do that. But beyond that, there's
10 nothing we can do.
11 BY MR PIFKO:
12 Q. So in identifying suspicious
13 orders, to the extent you can have an
14 impact on that, you try to do that?
15 MR. NICHOLAS: Object to the
16 form. And scope. Object to the
17 form.
18 THE WITNESS: Again, as a
19 wholesale distributor, we have a
20 view into the data that that
21 pharmacy, the consumption data,
22 the products that that pharmacy is
23 ordering from us. And based upon
24 that data, we can make a

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1 determination if an order is
2 suspicious.
3 But to be clear, even an
4 order that's found to be
5 suspicious and rejected by us,
6 there is not an equation between
7 finding an order suspicious and
8 diversion. They're separate.
9 They're separate concepts. There
10 could be an order that we find as
11 suspicious where there's
12 absolutely no diversion taking
13 place.
14 And so, again, as a
15 wholesale distributor, our
16 capabilities are somewhat narrow
17 in this respect.
18 BY MR PIFKO:
19 Q. The first question here on
20 this note here says, And what's being
21 diverted?
22 Agree?
23 A. Yes.
24 Q. And the heading of the

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1 slide, Is Most Commonly Diverted Drugs,
2 right?
3 A. Yes.
4 Q. You're talking about
5 diverted drugs, right, in this slide?
6 A. We're talking about the most
7 commonly diverted drugs, yes.
8 Q. And then you're talking
9 about the biggest threat for diversion
10 are opioids.
11 Do you see that?
12 A. Yes.
13 Q. So you then make the
14 linkage, you talk about -- you then
15 present the sentence I just read, about
16 someone who is prescribed hydrocodone
17 following an injury or medical
18 intervention for medical -- legitimate
19 medical purposes but then continues to
20 use and abuse the drug long after the
21 legitimate medical need has passed.
22 Why did you feel that you
23 wanted to communicate that information to
24 the people at this conference in

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1 connection with the discussion of
2 commonly diverted drugs?
3 MR. NICHOLAS: Object to the
4 form. Objection as to scope.
5 THE WITNESS: Again, this is
6 one slide of many where my goal
7 here was to inform and educate our
8 sales staff. And so that was the
9 intent of this presentation, to
10 make our sales staff aware, who
11 may not be aware, of some of the
12 finer points around diversion.
13 Maybe they read about opioid
14 abuse, maybe there's some other
15 general knowledge they have.
16 Here is simply an attempt by
17 me to describe some of the drugs
18 that are abused, and also a
19 possible scenario on how that
20 abuse might occur. There could be
21 many other scenarios. But this
22 was the goal and the intent and
23 the reasons behind the statement.
24 BY MR PIFKO:

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1 Q. Let's go to the next page.
2 The next page and then the
3 slides that follow after, the section is
4 called, Red Flags of Diversion.
5 Do you see that?
6 A. I do.
7 Q. What are red flags of
8 diversion?
9 MR. NICHOLAS: Objection as
10 to form and scope.
11 But go ahead.
12 THE WITNESS: So we've
13 talked about, as a wholesale
14 distributor, we have a system in
15 place to identify and report
16 suspicious orders. We do that
17 through our order monitoring
18 program.
19 We also have this notion and
20 this concept where, parallel to
21 our OMP, we run analytics. And
22 these analytics are designed to
23 identify red-flag behavior. So
24 that's one example of the

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1 definition of what would be a red
2 flag.
3 And what are some of these
4 analytics that might be revealed
5 to us through these programs that
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] So that would
12 be a red flag that we developed
13 through analytics.
14 There are other red flags
15 that are more physical. And these
16 red flags have been shared with
17 distributors by regulators. An
18 example of one that would be more
19 visible would be a lot of people
20 congregating outside of a pharmacy
21 in long lines. That might be a
22 physical red flag.
23 And in terms of the audience
24 here, which is salespeople who are

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1 visiting all of these locations on
2 regular bases, we want to alert
3 them to those sorts of physical
4 signs of red flags.
5 But I just want to
6 differentiate between the two,
7 some that we use internally within
8 the team and others that are more
9 physical.
10 BY MR PIFKO:
11 Q. When you talk about the
12 analytical system that is -- I don't
13 remember exactly the word you used, but
14 adjacent to the OMP program --
15 A. We run parallel to the OMP.
16 Q. -- when was that added to
17 the program?
18 A. When we completed the work
19 at enhancing our OMP, as we were going
20 through the work, we worked with our
21 outside consultant and developed these
22 dashboards that we would have available
23 for our folks on the team so that they
24 could have recent, readily available data

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1 in analytical formats to aid in their
2 decision-making. So those were developed
3 then, in terms of the computer versions.
4 In the legacy program prior
5 to that enhancement, we did run more
6 manual spreadsheets which contained
7 similar information, which was relied
8 upon by the team as they were doing their
9 order monitoring, evaluating customers in
10 terms of ongoing due diligence.
11 But specifically these
12 dashboards that I referred to were
13 developed with the assistance of FTI
14 during the same time period that we
15 enhanced the OMP.
16 Q. And that's around what year?
17 A. So the work began -- well,
18 the work had already begun when I joined
19 the company in March, let's say March
20 1st, 2014.
21 We worked, really, for the
22 better -- almost two years before we
23 started rolling out the advanced -- the
24 enhanced OMP, starting around June or

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1 July of 2015. And it took us about six
2 months to roll those out to all of our 26
3 distribution centers across the country.
4 Q. When we talked about some of
5 these red flags of diversion, I want to
6 elaborate on some of them.
7 A. Sure.
8 Q. Okay. So you made a
9 distinction between physical red flags
10 and data-driven red flags, agree?
11 A. I did.
[REDACTED]

Page 233

[REDACTED]

Page 234

[REDACTED]

Page 235

[REDACTED]

16 BY MR PIFKO:
17 Q. What about the -- have you
18 heard of the concept Holy Trinity?
19 A. Yes, I have.
20 Q. What is that?
21 A. That's a combination of
22 controlled substances that has been or
23 may be dispensed to a single patient.
24 And it would be a combination of a pain

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1 reliever, an anti-anxiety medicine and a
2 muscle relaxant. Typically, so you would
3 have an opioid, hydrocodone or oxycodone,
4 with alprazolam, and then carisoprodol is
5 the muscle relaxant.

[REDACTED]

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[REDACTED]

12 BY MR PIFKO:
13 Q. And that type of data is
14 data that you can request, we talked
15 about that earlier?
16 A. I described, yes, when we
17 collect dispensing data, I drew the
18 distinction between, you know, the
19 dispensing data and utilization report.
20 The dispensing data is
21 something that we would, you know,
22 collect under certain conditions. And I
23 described those, primarily, three
24 conditions.

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1 Q. Let's talk about the
2 physical red flags of diversion. Go to
3 the next page.
4 It shows a long line of
5 people outside a pharmacy.
6 Why is that a red flag?
7 A. Again, we've all been to
8 pharmacies and have picked up
9 prescriptions; and any prescription that
10 I've ever picked up, I don't recall
11 seeing a long line of patrons outside.
12 So just for the sheer fact alone that
13 it's something that you wouldn't
14 typically see.
15 That being said, again, this
16 presentation is a little dated. I think
17 that some of these red flags were
18 probably more relevant some time ago. I
19 don't think that -- that sort of activity
20 there would even be more rare in these
21 days.
22 Q. The next slide has some
23 license plates, and it talks about --
24 well, you say, I was always amazed, in my

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1 former position with DEA in Atlanta, when
2 we would be observing the activities at a
3 particular pharmacy and you would see
4 vehicles from Tennessee, West Virginia
5 and Virginia show up at the pharmacy,
6 typically with more than one person in
7 the vehicle, where the occupants of the
8 vehicle would go in, fill a prescription,
9 and then head right back to the highway
10 in the direction of their home state.
11 Do you see that?
12 A. I do.
13 Q. That's a red flag of
14 diversion?
15 MR. NICHOLAS: Object to the
16 form.
17 THE WITNESS: Yes.
18 BY MR PIFKO:
19 Q. And why is that?
20 A. So when I go to fill a
21 prescription, you know, unless there's
22 some hard-to-receive medication, I'm
23 going to go to a place that's convenient
24 to my home or my office.

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1 For people to travel great
2 distances to receive -- or to have
3 prescriptions filled would, therefore, be
4 a red flag.
5 Q. And in giving this
6 presentation and making these examples,
7 these are things that you wanted the
8 salespeople who are visiting the
9 pharmacies in connection with their jobs,
10 you wanted them to be able to observe
11 these things so they could report it back
12 to the company?
13 MR. NICHOLAS: Object to the
14 form.
15 THE WITNESS: We wanted them
16 to be knowledgeable about the red
17 flags. We wanted them to, if they
18 were to make these observations or
19 other observations that somehow
20 seemed unusual to them, we wanted
21 them to collect that information
22 and pass it back to us in the
23 diversion control section so that
24 we could follow up, yes.

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1 BY MR PIFKO:
2 Q. And you believe that by them
3 presenting that information, it can aid
4 the company in preventing diversion,
5 correct?
6 MR. NICHOLAS: Object to the
7 form.
8 THE WITNESS: By training
9 our diversion -- I mean, by
10 training our sales staff, I'm
11 sorry, this was just another step
12 that we took that we felt was
13 required to fulfill our
14 responsibilities under the
15 regulations.
16 BY MR PIFKO:
17 Q. Is this a step that was
18 added to your process?
19 MR. NICHOLAS: Object to the
20 form.
21 THE WITNESS: There was some
22 training that took place of our
23 sales staff. I believe I saw, in
24 the past, other PowerPoints that

<p style="text-align: right;">Page 242</p> <p>1 were presented. But I can't talk 2 about the specifics in terms of 3 who and when that was done. 4 BY MR PIFKO: 5 Q. Well, when you came into the 6 position, you undertook an effort to 7 become familiar with what the protocols 8 and processes were, correct? 9 MR. NICHOLAS: Object to the 10 form. Asked and answered a number 11 of times. 12 THE WITNESS: When I joined, 13 I tried to become aware of as much 14 as I could around the entire 15 diversion control program. 16 BY MR PIFKO: 17 Q. And was there any effort in 18 2015 -- or, sorry, 2014, when you joined 19 the company, to collect that kind of 20 information and put it in a usable form? 21 MR. NICHOLAS: Objection. 22 Outside the scope. 23 THE WITNESS: Could you 24 define your question a little bit</p>	<p style="text-align: right;">Page 244</p> <p>1 completely understanding. 2 Did the company have other 3 information like this that it 4 shared with its sales executives? 5 BY MR PIFKO: 6 Q. It's okay. Sorry that you 7 don't understand. 8 A. Sure. Thanks. 9 Q. This is after you joined the 10 company, right? 11 A. Yes. 12 Q. You gave this presentation? 13 A. I did. 14 Q. You had never given this 15 presentation before, right? 16 A. Correct. 17 Q. So my question is, before 18 you had given this presentation, were you 19 aware of whether there was any effort by 20 the company to obtain this type of 21 red-flag information from sales 22 associates and use it in their efforts to 23 prevent diversion? 24 MR. NICHOLAS: Well,</p>
<p style="text-align: right;">Page 243</p> <p>1 more? Because it's a little bit 2 open-ended. 3 BY MR PIFKO: 4 Q. These red flags of diversion 5 we're talking about, and specifically 6 we're talking about the training that was 7 done and how sales associates can make 8 observations that could help the company 9 in its efforts to prevent diversion. 10 And what I'm asking you is 11 whether you're -- if you're aware of 12 whether the company had any processes or 13 procedures to obtain and use that 14 information, in 2014, to prevent 15 diversion? 16 MR. NICHOLAS: Objection. 17 Form. And outside the scope. 18 THE WITNESS: So I guess I'm 19 a little confused, because this 20 would be an example of the 21 training that we provided to our 22 sales staff. 23 And maybe I'm missing 24 something. I'm still not</p>	<p style="text-align: right;">Page 245</p> <p>1 objection to the form. And to the 2 scope. And I think it's a 3 misleading question in light of 4 what the witness has just said 5 back to you. 6 THE WITNESS: As I responded 7 previous, there was some training 8 that was done, prior to my 9 arrival, of the sales staff. And 10 I remember seeing some 11 documentation, whether it was a 12 PowerPoint presentation, I don't 13 recall specifically what that was, 14 where similar training was 15 provided to our sales staff. 16 I can't really comment on 17 the specific content at this 18 point, because it was something 19 that I viewed among everything 20 else around our diversion control 21 program when I walked through the 22 doors. 23 BY MR PIFKO: 24 Q. Do you know if there were</p>

<p style="text-align: right;">Page 246</p> <p>1 any systems in place to collect 2 information and use it at the time that 3 you joined, that type of information? 4 MR. NICHOLAS: Objection. 5 Form. Scope. And there was 6 questioning on this yesterday of a 7 witness for whom this was within 8 the scope of his 30(b)(6) 9 deposition. 10 THE WITNESS: Again, collect 11 this type of information. So 12 diversion red flags for sales 13 executives. Again, my response 14 would be the same. I recall some 15 training that was given. The 16 content of the training, I 17 don't -- I don't recall. 18 BY MR PIFKO: 19 Q. My question is not about the 20 training. It's about whether there was 21 processes and protocols in place to use 22 information that sales associates might 23 have provided from these red flags of 24 diversion. That's what I'm asking you.</p>	<p style="text-align: right;">Page 248</p> <p>1 (Whereupon, 2 AmerisourceBergen-May Exhibit-10, 3 ABDCMDL 00159072, was marked for 4 identification.) 5 - - - 6 BY MR PIFKO: 7 Q. I'm handing you what's 8 marked as Exhibit-10. Sorry, I handwrote 9 the date on the copy, I thought it was 10 mine. That's the only writing that's on 11 there. 12 For the record, this is a 13 document Bates labeled ABDCMDL 00159072. 14 Take a moment to review this 15 and let me know when you're done. 16 For the record, it's dated 17 October 6th, 2016. The custodian is 18 David May. The file name is NADDI 19 slides. 20 A. Okay. 21 Q. Have you seen this before? 22 A. I recognize the content as 23 content that I delivered to a NADDI 24 training conference, NADDI being National</p>
<p style="text-align: right;">Page 247</p> <p>1 MR. NICHOLAS: Objection. 2 BY MR PIFKO: 3 Q. And to be clear, I'm asking 4 you in your personal capacity. 5 MR. NICHOLAS: Okay. 6 Objection. Asked and answered a 7 number of times. This is 8 repetitive. 9 THE WITNESS: In terms of 10 the latter part of your question, 11 whether there were protocols in 12 place, I don't know. 13 MR PIFKO: Let's take a 14 break. 15 VIDEO TECHNICIAN: Going off 16 record. 2:17 p.m. 17 - - - 18 (Whereupon, a brief recess 19 was taken.) 20 - - - 21 VIDEO TECHNICIAN: We're 22 back on record. The time is 2:32 23 p.m. 24 - - -</p>	<p style="text-align: right;">Page 249</p> <p>1 Association of Drug Diversion 2 Investigators. 3 Q. What was the purpose of this 4 presentation? 5 A. Again, it was intended to be 6 educational for the law enforcement 7 community about who wholesale 8 distributors were and how we could assist 9 them in their efforts. 10 Q. This is a presentation that 11 you gave to that organization on or 12 around October 2016? 13 A. So I've given two 14 presentations. I believe this is the 15 first presentation, yes. 16 Q. And you believe it was some 17 time in October 2016? 18 A. I don't have anything that's 19 dated, but -- I'd have to actually 20 confirm the date unless there's some 21 other document you can point me to that I 22 can confirm the date. 23 Q. I can just tell you that the 24 data associated with the document said</p>

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1 that it was dated October 6th, 2016.
2 A. So let's assume it's around
3 that time period.
4 If I created the document,
5 then, presumably, it would have been in
6 relation time-wise to when I gave the
7 presentation.
8 Q. Let's go to -- well, the
9 first slide.
10 Do you see the language on
11 the first page here in the notes,
12 McKesson, Cardinal and AmerisourceBergen
13 have a combined market share in excess of
14 90 percent?
15 A. Yes.
16 Q. Do you agree with that
17 statement?
18 MR. NICHOLAS: Object to the
19 form.
20 THE WITNESS: Again, I would
21 have researched that at that time
22 period and derived information
23 from others at the time period
24 when this was given.

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1 I recognize that the
2 information I received, I assume
3 that it was correct, that was
4 provided to me. And it's a
5 general estimate.
6 BY MR PIFKO:
7 Q. Do you recall before we were
8 talking about market share?
9 A. I do.
10 Q. And I had a question about
11 whether if you believed that the three
12 distributors with almost all of the
13 market share played any role in the
14 opioid epidemic.
15 Do you recall that
16 discussion?
17 A. I do.
18 Q. So now seeing the data, do
19 you believe that the entities who
20 controlled 90 percent of the
21 pharmaceutical distribution market had an
22 ability to take actions that would have
23 reduced the impact on the opioid crisis?
24 MR. NICHOLAS: Object to the

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1 form. Objection to the scope.
2 Asked and answered.
3 THE WITNESS: And I would
4 rely upon my previous response as
5 well. And restate it.
6 I can't sit here and speak
7 to the programs or market share
8 relative to Cardinal and McKesson.
9 I can say that, regardless of
10 market share, regardless of being
11 AmerisourceBergen or one of the
12 other 800 wholesale distributors,
13 it's not about market share, it's
14 really about everyone doing what
15 they're supposed to be doing.
16 BY MR PIFKO:
17 Q. And that's how we prevent
18 diversion and prevent the opioid crisis?
19 MR. NICHOLAS: Object to the
20 form. Object to the scope.
21 THE WITNESS: I'll rely on
22 my previous response.
23 BY MR PIFKO:
24 Q. Well, you said regardless of

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1 market share, regardless of being
2 AmerisourceBergen or one of the other 800
3 wholesale distributors, it's not about
4 market share, it's about, really,
5 everyone doing what they're supposed to
6 be doing.
7 What's everybody supposed to
8 be doing?
9 MR. NICHOLAS: Object to the
10 form. Object to the scope.
11 Object to the cross-examination of
12 the witness by his very last
13 answer. I'll object.
14 THE WITNESS: Again, from
15 your question, I understand you to
16 mean that, because of market
17 share, that that market share
18 somehow gives us some influence
19 over the opioid issue. And my
20 statement is that it's not a
21 question of market share. And at
22 AmerisourceBergen, we have
23 requirements that are put upon us
24 and we fulfill those requirements.

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1 BY MR PIFKO:
2 Q. And if everybody is doing
3 what they can be doing, that's how you
4 impact the crisis, correct?
5 MR. NICHOLAS: Well, object
6 to the form. Object to the scope.
7 Object to the fact that you've
8 asked the question about seven or
9 eight times, probably more,
10 probably fifteen or twenty times
11 today. Asked and answered.
12 THE WITNESS: I think I
13 responded several times to this.
14 And, again, I would just
15 emphasize that throughout the
16 closed system, there are different
17 requirements imposed upon
18 different registrants. And, yes,
19 if all registrants comply with
20 their requirements, then it would
21 have a positive effect on
22 diversion control.
23 BY MR PIFKO:
24 Q. Let's go to Slide 5, which

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1 is on Page 5.
2 Are you there?
3 A. Yes.
4 Q. There's a picture of a form
5 and then a discussion below about the
6 information you collect from your
7 customers pursuant to the "know your
8 customer" requirement.
9 A. Yes.
10 Q. Do you see that?
11 Is this the Form 590?
12 A. Yes.
13 Q. And let's go up to the
14 previous slide. Page 4.
15 You have a comment here that
16 says, You don't see specific reference to
17 knowing your customer in the law and
18 regulations, but you do see repeated
19 references to the concept in the final
20 decisions and orders issued relative to
21 actions taken by DEA against registrants,
22 as well as in public training sessions by
23 DEA.
24 Do you see that?

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1 A. I do.
2 Q. Do you agree with that
3 statement?
4 MR. NICHOLAS: Object to the
5 form.
6 THE WITNESS: I do agree
7 with that statement in the context
8 of this training. I would also
9 say that you see reference to due
10 diligence in other areas as well;
11 namely being the limited guidance
12 DEA has furnished in the form of
13 those memorandum that were shared.
14 BY MR PIFKO:
15 Q. And you believe knowing your
16 customer and due diligence is part of the
17 requirement to maintain effective
18 controls to prevent diversion?
19 MR. NICHOLAS: Object to the
20 form. Object to the scope.
21 THE WITNESS: I'm so sorry,
22 can you repeat your question,
23 please?
24 BY MR PIFKO:

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1 Q. Do you believe that knowing
2 your customer and due diligence is part
3 of the requirement to maintain effective
4 controls to prevent diversion?
5 MR. NICHOLAS: Object to the
6 form. Object to the scope.
7 THE WITNESS: I believe that
8 knowing your customer and due
9 diligence is an aspect of
10 AmerisourceBergen's program to
11 satisfy their requirements.
12 BY MR PIFKO:
13 Q. Do you believe that knowing
14 your customer is required under the law?
15 MR. NICHOLAS: Object to the
16 form. Object to the scope. And
17 he's not a lawyer.
18 THE WITNESS: Again, without
19 giving a legal opinion, we have,
20 as part of our program that we
21 administer, our diversion control
22 program, a "know your customer"
23 component, which we exercise in
24 order to accomplish due diligence.

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1 BY MR. PIFKO:
2 Q. Do you believe that's a
3 necessary component of the program in
4 order for it to be effective?
5 MR. NICHOLAS: Object to the
6 form. Object to the scope.
7 THE WITNESS: I believe that
8 it's a requirement that we have at
9 AmerisourceBergen, and it's one
10 that we've had in place and it's
11 part of our program.
12 BY MR PIFKO:
13 Q. You don't have a position
14 about whether it's required?
15 MR. NICHOLAS: Object to the
16 form. Object to the scope. Asked
17 and answered.
18 THE WITNESS: So, again, I
19 can't furnish a legal opinion.
20 What I can say is that I
21 believe we have and should have a
22 "know your customer" component;
23 and we do have a "know your
24 customer" component at our company

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1 as part of the diversion control
2 program.
3 BY MR PIFKO:
4 Q. Let's go to Page 19.
5 Are you there?
6 A. I am.
7 Q. So the notes that you wrote
8 here say, Final point, we must be mindful
9 of our actions in addressing the epidemic
10 of prescription drug abuse. I will use
11 the relationship between prescription
12 opioids and heroin as an example. When I
13 was overseeing the drug task force in
14 Charlotte ten years ago, there was a rise
15 in the influence of Mexican DTOs in
16 growing the heroin market. The issue was
17 overwhelming and the cross-culture of
18 people that were using heroin amazed me.
19 Over the last couple of years, the
20 overall tightening of the prescription
21 opioid market has led to increased heroin
22 abuse. Having confronted both issues, I
23 believe that our chances for success are
24 much better in the public arena working

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1 with pharmacists and doctors.
2 Do you see that?
3 A. I do.
4 Q. Did I read that correctly?
5 A. You did.
6 Q. Is that a statement that you
7 made at the time?
8 A. It was.
9 Q. Did you present this to
10 the -- at the conference, did you make
11 that statement at the conference?
12 A. I don't know if I made that
13 precise statement. These are notes that
14 I used.
15 Q. Do you believe these
16 statements to be true?
17 MR. NICHOLAS: Object to the
18 form.
19 But go ahead.
20 THE WITNESS: I do.
21 BY MR PIFKO:
22 Q. When you say "the overall
23 tightening of the prescription opioid
24 market has led to increased heroin

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1 abuse," what do you mean by that?
2 A. I think there's been several
3 actions that have been taken where it's
4 becoming more difficult for people to
5 receive prescription opioids over time.
6 And there are a number of different
7 reasons why.
8 I think that people who may
9 be addicted and can no longer get a
10 prescription opioid, can that cause them
11 to then go to the illegal market? I
12 think it can. Has that caused folks to
13 do that? I think it has.
14 I guess my only caveat here
15 is, I can't estimate to what extent that
16 this is -- where this is prevalent.
17 Q. You thought this was a
18 significant enough point to make the
19 conclusion of your presentation, agree?
20 MR. NICHOLAS: Object to the
21 form.
22 THE WITNESS: I think it was
23 one of many points I made during
24 the presentation.

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1 BY MR PIFKO:
2 Q. This was an impactful point
3 you wanted to make at the end of the
4 presentation, agree?
5 MR. NICHOLAS: Object to the
6 form.
7 THE WITNESS: I think all of
8 the information I provided during
9 the presentation was important for
10 the audience, including this
11 information.
12 BY MR PIFKO:
13 Q. Mexican DTO, that just means
14 drug trafficking organization?
15 A. Correct.
16 Q. Do you know who the sponsors
17 of NADDI are?
18 A. Not off the top of my head,
19 I do not.
20 Q. Do you know if prescription
21 drug manufacturers participate in that
22 organization?
23 MR. NICHOLAS: Object to the
24 form. Objection. Asked and

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1 answered.
2 THE WITNESS: I know that
3 there are participants both from
4 the private and public sector.
5 BY MR PIFKO:
6 Q. Let's go back to Slide 5.
7 This is the Form 590.
8 Is the Form 590 an important
9 part of AmerisourceBergen's diversion
10 control program?
11 MR. NICHOLAS: Object to the
12 form. Objection as to scope.
13 THE WITNESS: I would say
14 that all aspects of our program
15 are important. I couldn't -- I
16 couldn't categorize this as more
17 or less important than other
18 facets of our program. It's
19 another facet of our program.
20 BY MR PIFKO:
21 Q. So this talks about the
22 types of information that are sought in
23 the form.
24 Do you see that?

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1 A. I do.
2 Q. In the interest of time, I
3 won't necessarily read over all of it.
4 A. Okay.
5 Q. But what does the company do
6 with this information?
7 MR. NICHOLAS: Object as to
8 form. And scope.
9 THE WITNESS: So when we are
10 onboarding a customer, this
11 information is collected during a
12 site visit. And then a member of
13 the team will receive this
14 information and they'll go through
15 the form. We have a related form
16 that's a checklist. We'll
17 validate, to the extent possible,
18 the contents of the form.
19 And so we would validate
20 licenses, where we ask the
21 questions. We would collect
22 information relative to certain
23 estimates of drug usage. We would
24 ask about prior disciplinary

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1 action. And we would then, you
2 know -- again, use public
3 resources to collect and validate
4 the information that's on the
5 form, wherever possible; go to the
6 various boards, Board of Pharmacy,
7 boards of medicine, if we have
8 physician information, check for
9 prior disciplinary action.
10 And after that process is
11 complete, we would make a decision
12 whether we wanted to continue with
13 the onboarding of the prospective
14 customer.
15 BY MR PIFKO:
16 Q. Is there any effort, within
17 the time frame that you're the 30(b)(6)
18 witness, to update that information after
19 a customer is onboarded?
20 A. There are times that we
21 update this information, yes. There may
22 be changes at the location. If there is
23 a change of address, of course that would
24 affect the license of the location, so we

<p style="text-align: right;">Page 266</p> <p>1 would need to update that information. 2 If there was a change of 3 ownership and the location didn't move, 4 but we needed to get the new information 5 on ownership. And we would also do it on 6 an as-needed bases. For example, if we 7 were involved with the customer, in terms 8 of trying to mitigate some red flag 9 information, we may request an updated 10 form. 11 Q. Let's turn to Slide 17. 12 I'll read you from the notes 13 here. This is -- the image on Slide 17 14 is an image of The Controlled Substances 15 Act closed system of distribution, agree? 16 A. Yes. 17 Q. You have a statement here 18 that says, I truly believe that if we all 19 live up to our individual 20 responsibilities and obligations, we will 21 collectively have a huge, positive impact 22 on the prescription abuse issue. On the 23 other hand, any weak links in the system 24 will cause all of us to become less</p>	<p style="text-align: right;">Page 268</p> <p>1 BY MR PIFKO: 2 Q. You then say, To that end, a 3 wholesaler is responsible for knowing the 4 customer and monitoring the controlled 5 substances and listed chemicals shipped 6 to that customer, rejecting and reporting 7 suspicious orders. 8 Do you see that? 9 A. I do. 10 Q. Do you agree with that 11 statement? 12 MR. NICHOLAS: Object to the 13 form. 14 THE WITNESS: I agree with 15 the statement. 16 - - - 17 (Whereupon, 18 AmerisourceBergen-May Exhibit-11 19 ABDCMDL 00140843-44, was marked 20 for identification.) 21 - - - 22 BY MR. PIFKO: 23 Q. I'm handing you what is 24 marked as Exhibit-11. For the record,</p>
<p style="text-align: right;">Page 267</p> <p>1 effective. 2 Do you see that? 3 A. I do. 4 Q. Do you agree with that 5 statement? 6 MR. NICHOLAS: Object to the 7 form. 8 THE WITNESS: I do. And I 9 guess in the context, again, of 10 this meeting, if we start to make 11 this a full statement, and, I 12 guess, just as a point of 13 demonstrating our consistency, you 14 know, we all -- registrants have 15 regulations from requirements 16 imposed upon us by virtue of our 17 role in the system. I think I've 18 answered that several times today. 19 And I believe that if we all 20 live up to those roles, we'll 21 collectively have a positive 22 impact. I believe that to be 23 true, and I think I've been pretty 24 consistent about that.</p>	<p style="text-align: right;">Page 269</p> <p>1 it's a two-page document, Bates labeled 2 ABDCMDL 00140843 through 44. 3 Have you seen this before? 4 A. Not directly on here. But I 5 am included on distribution to CSRA OMP, 6 and so I have some recollection of this 7 e-mail. 8 Q. Well, let's just talk 9 generally. You can put this document 10 aside for a minute. 11 A. Sure. 12 Q. Do you recall there being 13 issues with deficiencies with the Form 14 590s? 15 A. I do recall, generally 16 speaking, there have been some occasions 17 where we'll have forms where they are not 18 completely legible, and there may have 19 also been occasions where not all of the 20 responses were provided. 21 Q. And the company was 22 undertaking efforts to try to address 23 these deficiencies in 2016; is that 24 correct?</p>

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1 MR. NICHOLAS: Object to the
2 form of the question, as it wasn't
3 his testimony.
4 Go ahead.
5 THE WITNESS: Again, I guess
6 I'll comment that, generally
7 speaking, we're always trying to
8 be vigilant to maintain our
9 processes. So I wouldn't identify
10 it as any particular time. It's
11 an ongoing process.
12 - - -
13 (Whereupon,
14 AmerisourceBergen-May Exhibit-12,
15 ABDCMDL 00159415-16, was marked
16 for identification.)
17 - - -
18 BY MR PIFKO:
19 Q. I'm handing you what's
20 marked as Exhibit-12. This document is
21 Bates labeled ABDCMDL 00159415 and 16.
22 Have you seen this document
23 before?
24 And you can continue to

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1 review it, I'm just trying to speed
2 things along for everybody.
3 A. I have, yes.
4 Q. Do you know what this is?
5 A. It's an e-mail string
6 regarding the CSRA 590 validation
7 project.
8 Q. And the e-mail in the bottom
9 of the first page, you are cc'd on there,
10 correct?
11 A. Yes.
12 Q. It's dated August 5th, 2016,
13 correct?
14 A. Correct.
15 Q. Do you recall receiving this
16 e-mail?
17 A. I recognize the content and
18 recall the e-mail.
19 Q. When was the last time you
20 saw this e-mail?
21 A. I haven't seen it recently.
22 Probably at that time.
23 Q. Is this a true and correct
24 copy of the e-mail?

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1 A. Yes.
2 Q. It says here that, Over the
3 past several months, the CSRA diversion
4 control team -- that's your team,
5 correct?
6 A. Yes.
7 Q. -- has been working on the
8 CSRA 590 validation project. This
9 project was initiated to validate that
10 all current ABDC customers authorized to
11 purchase controlled substances have the
12 required due diligence documentation in
13 file.
14 Do you see that?
15 A. Yes.
16 Q. Do you agree that that was
17 what the project was?
18 MR. NICHOLAS: Object to the
19 form.
20 THE WITNESS: Yes.
21 BY MR PIFKO:
22 Q. It says, The first phase of
23 this project was to conduct a full review
24 of every ABDC customer authorized to

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1 purchase controlled substances and
2 identify any with deficiencies.
3 Did I read that right?
4 A. Yes.
5 Q. This initial phase has been
6 completed, and a substantial number of
7 customers have been identified who will
8 be required to have their 590
9 documentation updated. See attached
10 spreadsheet.
11 Do you see that?
12 A. I do.
13 Q. Then you write back
14 approximately a year later.
15 Do you see the top e-mail
16 from you dated July 7th, 2017?
17 A. Yes.
18 Q. And you say, All, I wanted
19 to check in with you on the progress
20 being made on this project.
21 Unfortunately, as of this writing, we
22 have only received about 10 percent of
23 the required customer due diligence
24 documents. If you recall, we originally

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1 set a June 30th -- set June 30th as a
 2 completion date for the continued -- let
 3 me start over on that sentence.
 4 If you recall, we originally
 5 set June 30th as a completion date and
 6 the continued deficiency puts us at risk
 7 with regulators.
 8 Do you see that?
 9 A. I do.
 10 Q. Do you agree with that
 11 statement?
 12 MR. NICHOLAS: Object to the
 13 form.
 14 THE WITNESS: Yes.
 15 BY MR PIFKO:
 16 Q. And you wrote that in this
 17 e-mail?
 18 A. Yes.
 19 Q. Do you know how many 590
 20 forms were missing or had missing
 21 information?
 22 A. I believe there was
 23 approximately 3,000.
 24 But I do want to get back to

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1 one thing while you were reading there.
 2 You stated, when you started reading the
 3 second part of this e-mail, that almost a
 4 year later I responded. And I just want
 5 to address that.
 6 This was an e-mail that was
 7 sent to sales executives. I don't want
 8 to leave you with the impression that
 9 there were not other multiple e-mails
 10 related to this e-mail and dispel that
 11 notion that there was this one e-mail and
 12 then there was this one e-mail to these
 13 sales executives.
 14 I don't know what other
 15 e-mails are out there, but I know that
 16 there was a lot of communication relative
 17 to this project.
 18 Q. Okay. Understood.
 19 All I wanted to point out
 20 with the year date difference is that
 21 we're a year later, and that a year later
 22 after sending the original e-mail about
 23 this project, only 10 percent of the
 24 required documents had been obtained,

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1 agree?
 2 MR. NICHOLAS: Object to the
 3 form as to his agreeing as to what
 4 you were trying to point out.
 5 THE WITNESS: I understood
 6 that part of your question.
 7 But I didn't want to, again,
 8 leave the impression that an
 9 e-mail was sent on August 5th and
 10 then I didn't respond until a year
 11 later.
 12 BY MR PIFKO:
 13 Q. I didn't think that that was
 14 the case.
 15 - - -
 16 (Whereupon,
 17 AmerisourceBergen-May Exhibit-13,
 18 Tab Printout; Sales Assignment,
 19 was marked for identification.)
 20 - - -
 21 BY MR PIFKO:
 22 Q. I just put in front of you
 23 Exhibit-13.
 24 You see that this e-mail

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1 references having an attachment of a 590
 2 validation master spreadsheet --
 3 A. Yes.
 4 Q. -- dated July 28th, 2016?
 5 Do you see that? You've got
 6 to go to Exhibit-12, if you look at the
 7 header of the e-mail.
 8 A. Yes. Attachment. I see it.
 9 Q. So if you go over to
 10 Exhibit-13, there were three tabs in the
 11 document, or four tabs. This is one of
 12 the tabs, it's called, Sales Assignment.
 13 Do you know what this tab
 14 reflects?
 15 MR. NICHOLAS: Where is the
 16 tab? I'm sorry.
 17 MR PIFKO: It was produced
 18 natively, but what we do when we
 19 produce these is Bates label -- to
 20 use it as an exhibit, the Bates
 21 label is at the top and the tab is
 22 on a footer on the bottom.
 23 THE WITNESS: Again, in the
 24 context of this e-mail, and this

<p style="text-align: right;">Page 278</p> <p>1 being represented as one of the 2 attachments, this appears to be a 3 list, in the left column, customer 4 DEA number. And we tracked the 5 DEA registration. 6 And then it tells the 7 various sales folks that are 8 assigned to the registration. And 9 that would have been produced to 10 help us organize this work. 11 BY MR PIFKO: 12 Q. And this is a list of all 13 the customers whose Form 590 was missing, 14 correct, or -- 15 MR. NICHOLAS: Object to the 16 form. 17 BY MR. PIFKO: 18 Q. -- had deficient 19 information? 20 MR. NICHOLAS: Object to the 21 form. 22 THE WITNESS: Again, I know 23 we compiled the list. I know we 24 keep a spreadsheet of it. I'm not</p>	<p style="text-align: right;">Page 280</p> <p>1 revolved around finding situations 2 where we didn't have the 3 documentation in the file. And 4 that's what was the focus of the 5 file. 6 So that's the first -- 7 BY MR PIFKO: 8 Q. What's the difference 9 between not having the information and it 10 not being in the file? 11 MR. NICHOLAS: Object to the 12 form. 13 BY MR PIFKO: 14 Q. If it's not in the file, you 15 don't have the information, agree? 16 If I don't have anything in 17 my hand, I don't have anything in my 18 hand. 19 A. So -- 20 MR. NICHOLAS: Object to the 21 form. 22 THE WITNESS: So, again, I 23 just want to make sure that we 24 understand the context of the</p>
<p style="text-align: right;">Page 279</p> <p>1 sure, in looking at this, you 2 know, multi-page document, if this 3 is an accurate description. 4 I guess what I'll say is 5 that -- well, a couple of things 6 that I want to put in context 7 here. 8 First, in terms of this work 9 itself, and maybe I misinterpreted 10 your question, but this would 11 represent -- this project would 12 represent cases where we could not 13 locate due diligence files, in 14 terms of our customer base, and as 15 a result of that, where we could 16 not locate those due diligence 17 files, we initiated this project. 18 And I guess that's 19 important, I guess, to realize 20 as -- I don't want to leave the 21 impression that we didn't have due 22 diligence for these customers. I 23 want to make sure that we all 24 understand that this project</p>	<p style="text-align: right;">Page 281</p> <p>1 project. 2 And that is that we 3 identified a number of accounts 4 where we couldn't locate the 5 information. 6 My point there is I'm not 7 acknowledging that there were not 8 due diligence efforts made in 9 documentation collected. At the 10 time of this review, we couldn't 11 find that information. And that's 12 what this project involved. 13 So that's just to put this 14 in context. 15 The second part, again, do 16 these represent a part of or the 17 totality of those accounts, I 18 can't say by looking at this 19 stack. 20 BY MR PIFKO: 21 Q. Is that stack pretty large? 22 MR. NICHOLAS: Object to the 23 form. 24 THE WITNESS: Again, I think</p>

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1 you asked a question about how
2 many accounts there were. I
3 think, to my recollection, there
4 were roughly 3,000 when we
5 initiated that, to the best of my
6 recollection.
7 BY MR PIFKO:
8 Q. That stack of customers,
9 though, how thick is that in front of
10 you?
11 MR. NICHOLAS: Well, object
12 to the form.
13 BY MR PIFKO:
14 Q. Can you hold it up?
15 A. It's about an inch thick, I
16 guess.
17 Q. Can you hold it up?
18 A. Sure.
19 MR. NICHOLAS: Objection.
20 Object to the form.
21 BY MR PIFKO:
22 Q. Thank you.
23 MR. NICHOLAS: Showboating.
24 BY MR PIFKO:

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1 Q. If I tell you that the
2 number of files where you could not
3 obtain the due diligence information as
4 of 2016, the number of customers was
5 3,285, would you agree with me?
6 MR. NICHOLAS: I'll object
7 to the form. The witness has
8 already given testimony on this.
9 But I'll object to the form of the
10 question.
11 THE WITNESS: My response
12 was I think there was
13 approximately 3,000, so I think
14 that's pretty consistent.
15 BY MR PIFKO:
16 Q. So did you continue to
17 obtain this -- attempt to obtain this
18 information over the years?
19 A. Yes.
20 Q. Do you know what the status
21 of this project was as of 2017?
22 A. I cannot say definitively
23 what the status was in 2017.
24 Q. Do you know if these

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1 deficiencies have been remedied as of May
2 29th, 2018?
3 MR. NICHOLAS: Object to the
4 form.
5 THE WITNESS: I think the
6 project, in terms of its
7 completion -- and, again, I have
8 to estimate this -- is in the 60
9 percent range of completion, but
10 that's the best of my knowledge,
11 just sitting here today with no
12 documentation.
13 BY MR PIFKO:
14 Q. At the present time, your
15 estimate, based on your involvement with
16 the project, is that there's still about
17 40 percent of them that have not been
18 rectified yet?
19 MR. NICHOLAS: Object to the
20 form.
21 THE WITNESS: That's my best
22 estimate, based upon my
23 recollection.
24 BY MR PIFKO:

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1 Q. Thank you.
2 A. But I think I'm in the
3 ballpark.
4 Q. Do you know when the Form
5 590 process was implemented?
6 A. Not precisely when.
7 Approximately when, I believe it was
8 around 2007, in terms of that particular
9 form. There may have been predecessors
10 that I can't comment on.
11 I'm not the best person to
12 talk about what the due diligence efforts
13 looked like prior to then.
14 - - -
15 (Whereupon,
16 AmerisourceBergen-May Exhibit-14,
17 ABDCMDL 00002232, was marked for
18 identification.)
19 - - -
20 BY MR PIFKO:
21 Q. I'm handing you what's
22 marked as Exhibit-14.
23 For the record, this is a
24 one-page document Bates labeled ABDCMDL

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1 00002232. It's some e-mails dated
2 December 9th, 2016.
3 Let me know when you're done
4 reviewing this.
5 A. Okay.
6 Q. Have you seen this e-mail
7 before?
8 A. I have, during -- I guess it
9 would be December 9th, 2016.
10 Q. Do you recall the discussion
11 in this e-mail?
12 A. Generally, based upon the
13 content.
14 Q. Is this a true and correct
15 copy of the e-mail?
16 A. Yes.
17 Q. Can you tell me about what's
18 discussed in the e-mail here?
19 MR. NICHOLAS: Object to the
20 form.
21 THE WITNESS: You know,
22 according to the content here that
23 I'll rely upon, it's an exchange
24 between a member of Purdue's

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1 compliance group and Eric
2 Cherveny, who works on our
3 diversion control team, about
4 media reports relative to
5 physicians.
6 BY MR PIFKO:
7 Q. Eric says, FYI, Purdue
8 Pharma sends me this list periodically.
9 It's a list that Purdue maintains
10 regarding prescriber action. Not sure
11 how they collect the data. Yellow
12 highlighting indicates new action since
13 the last submission. Blue highlighting
14 indicates a physician who was on a
15 previous report but who has had
16 subsequent action. We need to discuss if
17 we're going to use this list and, if so,
18 how.
19 Do you see that?
20 A. I do.
21 Q. Do you recall getting this
22 list from Purdue Pharma?
23 A. I do not recall whether we
24 did or did not get that list from Purdue

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1 Pharma. And I'm guessing, from the
2 context here I'm seeing as you just read
3 it, Eric is stating that he doesn't know
4 how they provide the information. But
5 from the lower e-mail, it looks like it's
6 generated from media reporting.
7 Q. Do you recall getting this
8 list and doing anything with it?
9 MR. NICHOLAS: Object to the
10 form of the question. Asked and
11 answered.
12 THE WITNESS: So, yeah, just
13 to repeat my response, I don't
14 know whether we did or did not get
15 a copy of that list.
16 I do know, as part of our
17 program, we do maintain a -- what
18 we refer to as a suspect
19 subscriber list, which is distinct
20 from this list. I don't know if
21 Eric added this information to
22 that list or not at this point.
23 BY MR PIFKO:
24 Q. The suspect subscriber list,

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1 can you tell me what that is?
2 A. Again, when we receive
3 information relative to doctors, we
4 receive the DEA reports, the register
5 reports, as they come out, where DEA
6 announces their actions they've taken
7 against practitioners.
8 So if we were to receive one
9 of those reports where they've taken an
10 action against a practitioner, we would
11 add that information to the list so that
12 in doing our due diligence, if we came
13 across those doctors, we would have that
14 information.
15 Q. Does AmerisourceBergen --
16 sorry.
17 With respect to the suspect
18 subscriber list, do you know when that
19 effort to collect that list was
20 initiated?
21 MR. NICHOLAS: Objection
22 only as to scope.
23 THE WITNESS: Previous to my
24 arrival. It was -- to my

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1 recollection, it existed when I
2 arrived.
3 BY MR PIFKO:
4 Q. With respect to the suspect
5 subscriber list, do you know if it was
6 AmerisourceBergen's practice to inform
7 customers in the area where the suspect
8 prescribers were about these physicians
9 and that they shouldn't fill
10 prescriptions from them if they had their
11 licenses revoked?
12 MR. NICHOLAS: Objection as
13 to scope.
14 THE WITNESS: Well, the
15 answer is no. And I'm not even
16 sure how we would do that.
17 BY MR PIFKO:
18 Q. How about with respect to
19 this list that Purdue Pharma sent you,
20 was there ever any effort to communicate
21 the company's knowledge of these
22 prescribers of concern identified by
23 Purdue to customers in the area where
24 these physicians were?

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1 MR. NICHOLAS: Objection to
2 the form of the question. The
3 witness has twice said he doesn't
4 know whether they received the
5 list or not. So I don't want
6 there to be a misleading record
7 here.
8 THE WITNESS: Same response.
9 I'm not sure what the outcome of
10 this e-mail string was relative to
11 the list provided by Purdue at
12 this time.
13 BY MR PIFKO:
14 Q. Well, if there was a
15 practice of sharing it with your
16 customers, you would be aware of that,
17 right?
18 MR. NICHOLAS: Object to the
19 form.
20 THE WITNESS: I'm not
21 aware -- again, I've answered the
22 question.
23 But I'm not aware of us
24 sharing information, through some

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1 broadcasting, to our customers in
2 particular areas. Again, I don't
3 even know how we would do that.
4 And I guess along that
5 point, the obligation of the
6 pharmacist really is preeminent
7 when it comes to knowing the
8 physicians for whom he's filling
9 prescriptions under his
10 corresponding responsibility.
11 So, again, that would be an
12 area that, as a wholesale
13 distributor, you know, that's --
14 that's within the responsibility
15 of the pharmacist, in my view.
16 BY MR PIFKO:
17 Q. Going back to Exhibits-12
18 and 13 -- do you have 12 in front of you?
19 A. I have 12, yes. And 13,
20 yes.
21 Q. You said in your e-mail here
22 that, Continued deficiency puts us at
23 risk with regulators.
24 Do you see that?

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1 A. Yes.
2 Q. Did you ever notify
3 regulators that there were deficiencies
4 with your 590 forms?
5 MR. NICHOLAS: Object to the
6 form. Object to the question.
7 THE WITNESS: I have not --
8 or we have not identified any
9 deficiencies to the regulators.
10 To the extent where
11 regulators have arrived at our
12 distribution centers and have
13 requested due diligence files and
14 we've supplied those, we've
15 satisfied their requirement.
16 If, when they've requested
17 due diligence files and we could
18 not locate one, that's also been
19 identified through them, in terms
20 of offering an explanation.
21 As I've stated here today,
22 perhaps we had the file, we can't
23 locate the file for myriad of
24 reasons.

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1 So short answer is, we have
2 not gone to the regulator and say,
3 we have a deficiency. I don't
4 believe we have a deficiency.
5 The other part of that,
6 again, is, we have had
7 conversations with the regulators;
8 when we have not had that file,
9 that has been identified to them.
10 And it's been a rarity.
11 It's not been -- it's not been a
12 common occurrence.
13 BY MR PIFKO:
14 Q. Well, we know there's 3,200
15 where your company identified them to be
16 deficient, agree?
17 MR. NICHOLAS: Object to the
18 form. Object to the arguing.
19 THE WITNESS: Again, I think
20 that -- I think that we identified
21 the issue as a team. Then we set
22 about a plan to put corrective
23 action in place. And we've been
24 working that plan to have that

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1 corrective action completed.
2 MR. PIFKO: We're going to
3 take a short break.
4 VIDEO TECHNICIAN: Going off
5 the record. 3:30 p.m.
6 - - -
7 (Whereupon, a brief recess
8 was taken.)
9 - - -
10 VIDEO TECHNICIAN: We're
11 back on record at 3:44 p.m.
12 MR. NICHOLAS: There was
13 testimony in the previous set of
14 questions about a list of --
15 concerning a list of due diligence
16 files that were missing or not
17 available. And there was
18 testimony about the fact that
19 there was approximately 3,000 such
20 documents -- 3,000 such files.
21 There was also testimony
22 about the fact that these files
23 were contained or illustrated or
24 displayed on three different tabs,

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1 or maybe it was four different
2 tabs.
3 MR. CLUFF: I believe it's
4 four tabs.
5 MR. NICHOLAS: Okay. We
6 have gone back, on the break, we
7 have not talked to the witness
8 about this, and checked the tabs
9 and checked the stack of -- the
10 stack of -- that you displayed,
11 that you gave him, that purports
12 to represent the 3,000 files.
13 This stack is a stack of
14 approximately 13,000 files. It is
15 not -- it does not display the
16 3,000 that you discussed. The
17 3,000 that you discussed are
18 contained in Tabs 1 and Tabs 2,
19 which are identified as a red tab
20 and a blue tab. If you print
21 those out and add them up, it does
22 appear to be about 3,000 or so.
23 So what I'm seeing is that
24 you gave him a list -- a stack of

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1 13,000, which does not represent
2 what you said it did; you asked
3 him questions about it; and then
4 you even had him hold it up on
5 camera.
6 Now, I'm going to ask you to
7 withdraw the line of questioning.
8 MR. PIFKO: I will not
9 withdraw the line of questioning.
10 MR. NICHOLAS: And I will
11 ask you to correct the record.
12 MR. PIFKO: We can meet and
13 confer about it after this
14 deposition.
15 MR. NICHOLAS: Wait a
16 minute. Hold on.
17 MR. PIFKO: I do not know
18 the facts that you are
19 representing to be true.
20 MR. NICHOLAS: We can check
21 right now. We have it right here.
22 I can show it to you in two
23 seconds. I have the tabs.
24 MR. PIFKO: We can do it off

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1 the record. I'll be happy to look
2 at it off the record.
3 If you want to go off the
4 record, I can take a look.
5 MR. NICHOLAS: Let's go off
6 the record, and you'll take a look
7 and then you tell me what you want
8 to do about it.
9 VIDEO TECHNICIAN: Going off
10 the record. 3:46 p.m.
11 - - -
12 (Whereupon, a discussion off
13 the record occurred.)
14 - - -
15 VIDEO TECHNICIAN: We're
16 back on record at 3:58 p.m.
17 MR. PIFKO: Let me represent
18 that when we went off the record,
19 counsel for defendants is stating
20 things to be facts, based on their
21 research of documents, in front of
22 the witness and trying to
23 influence the outcome of this
24 deposition and making accusations

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1 about improper conduct that we, in
2 his mind, allegedly did.
3 I can assure you that we had
4 no intention to misrepresent a
5 document or the record. We asked
6 the witness what it was.
7 And to be frank with you, if
8 you want to cross -- or if you
9 want to direct examine your
10 witness about something
11 afterwards, that is the
12 appropriate way to handle it.
13 And what you've done by
14 making these statements about what
15 facts you believe to be true in
16 front of the witness and in front
17 of all counsel here in the room is
18 you have tainted the process and
19 you testified and you created
20 facts.
21 And that -- you are done
22 with this whole thing. You lost
23 your opportunity to get the
24 witness to say, on his own

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1 volition, what it is or isn't.
2 MR. NICHOLAS: Okay. Let's
3 make sure the record is clear.
4 MR. PIFKO: It's -- I'm
5 taking this deposition. You're
6 not talking anymore.
7 MR. NICHOLAS: No, no. I'm
8 going to talk, okay?
9 BY MR. PIFKO:
10 Q. Sir, I'm going to hand you
11 Exhibit --
12 MR. NICHOLAS: I'm going to
13 talk. Because you haven't let
14 me -- we went off the record so
15 you --
16 MR. PIFKO: No. No. We're
17 done. You are not talking during
18 this deposition. I am taking this
19 deposition, okay?
20 MR. NICHOLAS: We went off
21 the record so we could show you
22 the basis for why I'm saying --
23 MR. PIFKO: And you did not
24 show an adequate basis.

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1 MR. NICHOLAS: Well, that's
2 what you say. You looked at it.
3 Now, what you're telling
4 me --
5 MR. PIFKO: And did all of
6 this in front of the witness.
7 This is totally improper.
8 MR. NICHOLAS: I'm going to
9 ask you --
10 MR. PIFKO: I'm not
11 listening to you. It's my
12 deposition. You need to be quiet.
13 If you want to meet --
14 MR. NICHOLAS: Hold on.
15 Hold on.
16 MR. PIFKO: If you want to
17 meet and confer with me about
18 something after this deposition,
19 I'll be happy to listen to you.
20 MR. NICHOLAS: Listen to
21 your question before you say that.
22 Listen to the question you asked
23 on the record.
24 MR. MAHADY: Question: And

<p style="text-align: right;">Page 302</p> <p>1 this is a list of all --</p> <p>2 MR. PIFKO: You're</p> <p>3 continuing to influence the</p> <p>4 process --</p> <p>5 MR. MAHADY: -- incorrect or</p> <p>6 deficient --</p> <p>7 MR. NICHOLAS: I'll read it.</p> <p>8 Question by you, Mr. Pifko:</p> <p>9 And this is all -- and this is a</p> <p>10 list of all the customers whose</p> <p>11 Form 590 was missing, correct? Or</p> <p>12 had deficient information?</p> <p>13 MR. PIFKO: And then I asked</p> <p>14 him, is that true?</p> <p>15 And he can say whatever he</p> <p>16 can say. If I'm wrong, I'm wrong.</p> <p>17 He can say whatever he said. He</p> <p>18 answered.</p> <p>19 I didn't -- I can't put</p> <p>20 facts into his mind.</p> <p>21 MR. NICHOLAS: You</p> <p>22 deliberately --</p> <p>23 MR. PIFKO: I did not</p> <p>24 deliberately do anything.</p>	<p style="text-align: right;">Page 304</p> <p>1 4 and ignored the summary?</p> <p>2 MR. PIFKO: We had the</p> <p>3 summary. And I just read him the</p> <p>4 summary, and I asked him if that</p> <p>5 was the number. I read the exact</p> <p>6 number, you all heard it, 3,285.</p> <p>7 That was the number. I asked him</p> <p>8 if that was the number.</p> <p>9 MR. NICHOLAS: Yes. We're</p> <p>10 all agreeing that there were</p> <p>11 approximately -- the record says</p> <p>12 what it says --</p> <p>13 MR. PIFKO: Right. So</p> <p>14 there's no --</p> <p>15 MR. NICHOLAS: -- which is</p> <p>16 approximately 3,000 files.</p> <p>17 MR. PIFKO: So there's no --</p> <p>18 there's no problem with the</p> <p>19 record.</p> <p>20 MR. NICHOLAS: You gave him</p> <p>21 a stack of 13,000 --</p> <p>22 MR. PIFKO: There's no</p> <p>23 problem with the record.</p> <p>24 MR. NICHOLAS: -- and asked</p>
<p style="text-align: right;">Page 303</p> <p>1 MR. NICHOLAS: Not only did</p> <p>2 you deliberately print the wrong</p> <p>3 list, but then you had him hold</p> <p>4 the list up.</p> <p>5 MR. PIFKO: You have no</p> <p>6 evidence I deliberately printed</p> <p>7 anything.</p> <p>8 MR. NICHOLAS: Are you</p> <p>9 denying it?</p> <p>10 MR. PIFKO: Yes. I did not</p> <p>11 deliberately --</p> <p>12 MR. NICHOLAS: Are you</p> <p>13 denying that you did not know --</p> <p>14 you did not know this is the wrong</p> <p>15 list?</p> <p>16 MR. PIFKO: I did not</p> <p>17 deliberately do anything here.</p> <p>18 MR. NICHOLAS: Do you agree</p> <p>19 this is the wrong list?</p> <p>20 MR. PIFKO: No. Based on</p> <p>21 what you've shown, I do not know</p> <p>22 that that's the wrong list.</p> <p>23 MR. MAHADY: So you skipped</p> <p>24 the first three tabs, went to Tab</p>	<p style="text-align: right;">Page 305</p> <p>1 him if that is the list of 3,000.</p> <p>2 MR. CLUFF: Let me just ask</p> <p>3 one question here.</p> <p>4 Do you agree that that is a</p> <p>5 tab from the spreadsheet in</p> <p>6 question?</p> <p>7 MR. NICHOLAS: It is the</p> <p>8 wrong -- no.</p> <p>9 MR. CLUFF: I'm asking just</p> <p>10 for foundation.</p> <p>11 That's not in the tab?</p> <p>12 MR. NICHOLAS: No.</p> <p>13 MR. CLUFF: That's not in</p> <p>14 the spreadsheet?</p> <p>15 MR. MAHADY: It's in the</p> <p>16 spreadsheet and there's a summary.</p> <p>17 MR. NICHOLAS: There were --</p> <p>18 MR. PIFKO: That's what I'm</p> <p>19 asking, it was in the spreadsheet.</p> <p>20 MR. NICHOLAS: -- four tabs.</p> <p>21 There were four tabs.</p> <p>22 MR. PIFKO: It doesn't</p> <p>23 matter --</p> <p>24 MR. NICHOLAS: There were</p>

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1 four tabs. And you gave him the
2 wrong one.
3 MR. CLUFF: And we printed
4 all four of them.
5 MR. NICHOLAS: And you're
6 taking the wrong one --
7 MR. CLUFF: We were prepared
8 to ask the witness further
9 questions --
10 MR. NICHOLAS: You
11 deliberately --
12 MR. CLUFF: You told us that
13 that was not the list. You did
14 not tell us that was not the list.
15 That's the record.
16 MR. MAHADY: You skipped the
17 first three --
18 MR. CLUFF: You say what you
19 want.
20 MR. MAHADY: -- tabs and
21 went right to Tab 4.
22 MR. CLUFF: This is
23 discovery, Zach.
24 MR. MAHADY: If you have the

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1 other three, show him the list.
2 If you have the other three tabs,
3 show him the other three tabs.
4 MR. CLUFF: You are free to
5 show him the other tabs. We asked
6 him a line of questions about the
7 tab that we wanted to talk about
8 to begin with.
9 His testimony was that was
10 the tab, when he was asked, of the
11 customers.
12 MR. NICHOLAS: You poisoned
13 the record.
14 MR. PIFKO: No, you did,
15 okay?
16 MR. NICHOLAS: You poisoned
17 the record. You guys poisoned the
18 record by deliberately giving him
19 the wrong thing.
20 MR. PIFKO: If it makes you
21 feel better, I will hand him the
22 other tabs. I was honestly trying
23 to be quick. You've mentioned on
24 multiple occasions that you want

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1 to get out of here. It's a
2 Saturday --
3 MR. NICHOLAS: No, I know we
4 are going seven hours, there's no
5 question about that. We went
6 seven hours yesterday and we're
7 going seven today.
8 I'm not trying to harass --
9 MR. PIFKO: If I go seven
10 hours, that's my right, okay? I'd
11 like to be done as soon as I can
12 as well, okay? And this time
13 arguing does not count towards the
14 record.
15 If it would make you feel
16 better, I would be happy to show
17 him the other tabs. The numbers
18 he discussed are the numbers.
19 That's the fact.
20 MR. NICHOLAS: I'm not --
21 MR. PIFKO: So it doesn't
22 make any difference.
23 MR. NICHOLAS: -- saying
24 anything about the numbers. I'm

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1 talking about this BS display that
2 you made to the jury.
3 MR. PIFKO: That's not -- do
4 you agree or disagree that that is
5 a document that was attached to
6 that e-mail? Did we misrepresent
7 that that's part of the e-mail,
8 that that's part of the
9 attachment?
10 MR. NICHOLAS: Mark, there's
11 an unlimited number of documents
12 in the world, you can throw to
13 someone. So what? You have --
14 MR. PIFKO: Is that --
15 MR. NICHOLAS: You gave him
16 the wrong document. And you did
17 it on purpose.
18 MR. PIFKO: Is that a
19 document that was attached from
20 that spreadsheet; yes or no?
21 MR. NICHOLAS: It's the
22 wrong spreadsheet, as you well
23 know.
24 MR. CLUFF: It's not the

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1 wrong spreadsheet.
2 MR. PIFKO: No, it's not the
3 wrong spreadsheet.
4 MR. NICHOLAS: It's the
5 wrong part of the spreadsheet,
6 which you knew.
7 MR. PIFKO: It's part of the
8 spreadsheet --
9 MR. NICHOLAS: Look, guys,
10 you do you agree that this list of
11 13,000 -- 13,000 files is not the
12 list of the 3,000 you were asking
13 him about?
14 MR. PIFKO: You
15 completely --
16 MR. NICHOLAS: Right?
17 MR. PIFKO: You
18 completely --
19 MR. NICHOLAS: You know
20 this, why don't you just correct
21 the record?
22 MR. PIFKO: You completely
23 bungled the attempt to correct the
24 record by disclosing all of this

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1 in front of the witness.
2 MR. NICHOLAS: I don't think
3 so, Mark.
4 MR. PIFKO: Yes, you did.
5 We could have fixed it. But you
6 screwed it all up, and now we
7 can't do it because you disclosed
8 it in front of the witness.
9 MR. NICHOLAS: We can fix
10 it. You can --
11 MR. PIFKO: No.
12 MR. NICHOLAS: It's very
13 easy to fix. You show him the
14 correct -- show him the correct
15 spreadsheets, and you say, I
16 showed you the wrong spreadsheet
17 before, I'd like --
18 MR. PIFKO: Again, now
19 you're telling him what to say.
20 You're walking us through the
21 conversation in front of the
22 witness.
23 MR. NICHOLAS: No, no, no.
24 I'm telling you what to say, so

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1 you make an honest record.
2 You're big on let's have a
3 clean record, let's get answers to
4 questions.
5 MR. PIFKO: I am.
6 MR. NICHOLAS: Do you want
7 real answers?
8 MR. PIFKO: Your witness has
9 been dodging the questions all
10 day.
11 MR. NICHOLAS: Do you want
12 straight stuff or not?
13 MR. PIFKO: I do.
14 MR. NICHOLAS: Do you want
15 to be straight or not?
16 MR. PIFKO: I do.
17 MR. NICHOLAS: This is
18 not --
19 MR. PIFKO: I do want to be
20 straight.
21 MR. NICHOLAS: -- playing it
22 straight. This is not just
23 playing it straight, guys, and you
24 know it.

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1 MR. PIFKO: We're going to
2 move on.
3 MR. NICHOLAS: So you're not
4 going to do anything? You're not
5 going to correct the record?
6 MR. PIFKO: I'm going to
7 move on and ask the questions that
8 I want to ask. This is my
9 deposition.
10 BY MR. PIFKO:
11 Q. I'm handing you what is
12 marked --
13 MR. NICHOLAS: So for the
14 record --
15 BY MR. PIFKO:
16 Q. -- Exhibit-15.
17 MR. NICHOLAS: For the
18 record, counsel is refusing to
19 correct the record, knowing that
20 it's inaccurate and knowing --
21 MR. PIFKO: I do not have
22 any information --
23 MR. NICHOLAS: Knowing that
24 he put an inaccurate document

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1 that's not only misleading, but a
 2 wrong document, in front of the
 3 witness.
 4 - - -
 5 (Whereupon,
 6 AmerisourceBergen-May Exhibit-15,
 7 Tab Printout, was marked for
 8 identification.)
 9 - - -
 10 BY MR. PIFKO:
 11 Q. Sir, I want to direct you
 12 back --
 13 MR. NICHOLAS: We reserve
 14 all rights on this.
 15 BY MR. PIFKO:
 16 Q. I want to direct you back to
 17 Exhibit-14, which was the prescriber
 18 action document that Purdue sent to
 19 AmerisourceBergen.
 20 Do you recall discussing
 21 that?
 22 A. Yes.
 23 Q. And your counsel, again,
 24 trying to influence the proceedings

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1 improperly, made some objections about
 2 whether there even was such a list.
 3 Well, I've just handed you
 4 what's marked as Exhibit-15, a copy of
 5 the list, which if you look at
 6 Exhibit-14, it says, Attachment
 7 prescriber action weekly grid.
 8 Exhibit-15 is a printout of that grid.
 9 MR. NICHOLAS: I object to
 10 the form.
 11 BY MR. PIFKO:
 12 Q. It's Bates labeled --
 13 MR. NICHOLAS: I object to
 14 the characterization.
 15 BY MR. PIFKO:
 16 Q. -- ABDCMDL 00002239.
 17 MR. NICHOLAS: What's your
 18 question?
 19 BY MR. PIFKO:
 20 Q. Take your time to review the
 21 document, sir.
 22 MR. NICHOLAS: So we don't
 23 have a repetition of what happened
 24 last time, in case anyone asks the

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1 witness to hold this up --
 2 MR. PIFKO: Stop making false
 3 accusations.
 4 MR. NICHOLAS: In case
 5 anyone asks the witness to hold up
 6 this stack of paper, half of it is
 7 blank. Half of these page are
 8 blank.
 9 BY MR. PIFKO:
 10 Q. Have you seen this -- have
 11 you seen this document before,
 12 Exhibit-15?
 13 A. I'm not familiar with this
 14 document.
 15 Q. You were -- you did receive
 16 the e-mail attaching it, correct? We
 17 established that earlier?
 18 MR. NICHOLAS: Object to the
 19 form. You're representing that
 20 this was attached to the e-mail.
 21 He just said he's never seen the
 22 document.
 23 MR. PIFKO: Again, you're
 24 coaching the witness.

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1 MR. NICHOLAS: No, now I
 2 have to be this way because of
 3 what you did the last time with
 4 that stack of documents that was
 5 so inaccurate. Now I have no
 6 choice.
 7 MR. PIFKO: You have no right
 8 to be this way. You're coaching
 9 the witness. You've been doing it
 10 yesterday and today.
 11 MR. NICHOLAS: No, I --
 12 MR. PIFKO: All day long.
 13 MR. NICHOLAS: -- really
 14 haven't.
 15 MR. PIFKO: Yes, you have.
 16 MR. NICHOLAS: No, I
 17 haven't.
 18 THE WITNESS: So I have this
 19 list in front of me. I don't
 20 recognize this list. I see there
 21 was an attachment on the e-mail
 22 sent to me. I don't recall
 23 specifically opening the
 24 attachment, but I don't recall not

<p style="text-align: right;">Page 318</p> <p>1 opening the attachment. 2 MR PIFKO: Clearly, your 3 counsel has influenced your 4 testimony. And that is wholly 5 inappropriate. 6 Move to strike that 7 response. 8 BY MR. PIFKO: 9 Q. You talk -- 10 MR. NICHOLAS: Object to the 11 form. 12 BY MR PIFKO: 13 Q. You talk, in the -- 14 MR. NICHOLAS: Object to the 15 form. 16 BY MR PIFKO: 17 Q. -- in Exhibit-14 about, We 18 could add this to our due diligence list 19 on the S drive. 20 Do you see that? 21 A. I do. 22 Q. What is the S drive? 23 A. It is a common, when I say 24 "common," a shared drive, S being for</p>	<p style="text-align: right;">Page 320</p> <p>1 MR. NICHOLAS: Object to the 2 form. 3 - - - 4 (Whereupon, 5 AmerisourceBergen-May Exhibit-16, 6 ABDCMDL 00156364, was marked for 7 identification.) 8 - - - 9 BY MR PIFKO: 10 Q. Despite the false accusation 11 of your counsel, I have zero interest in 12 creating a false record in this 13 proceeding. 14 I'm going to show you the 15 other three tabs of the spreadsheet that 16 we previously discussed that your counsel 17 is jumping up and down about. 18 Is that 16, Mr. May? 19 A. Yes. 20 Q. You have what's in front of 21 you as Exhibit-16. 22 Do you know what that is? 23 A. This is a spreadsheet that 24 appears to represent various assignments</p>
<p style="text-align: right;">Page 319</p> <p>1 shared, on our computer. 2 Q. What is the S drive -- what 3 purpose does it serve for the diversion 4 control division? 5 A. It's used for various 6 departments at the company and CSRA -- 7 it's just a common depository for 8 documents. 9 Q. Can you turn to the last 10 page of Exhibit-15? 11 There's a column on the 12 left -- so there's a Column A, with news 13 date. And then there's a column on the 14 left -- I didn't make this list, but it 15 looks like the numbers jump around. 16 So I was going to ask you 17 how many entries are on here, but I don't 18 know that we can see that from this 19 printed-out copy, we have to look at the 20 electronic copy. 21 So you don't know if the 22 company did anything with this list, 23 correct? 24 A. I do not.</p>	<p style="text-align: right;">Page 321</p> <p>1 according to sales, regarding the 2 discussed due diligence files that we 3 were missing. 4 Q. And what is the number of 5 due diligence files that are missing or 6 reflected on that exhibit that you're 7 looking at? 8 A. Grand total? 9 Q. It's on the bottom right. 10 A. Yes. 11 3,285. 12 Q. Can you look at the next 13 exhibit I put in front of you? 14 - - - 15 (Whereupon, 16 AmerisourceBergen-May Exhibit-17, 17 Tab Printout, was marked for 18 identification.) 19 - - - 20 (Whereupon, 21 AmerisourceBergen-May Exhibit-18, 22 Tab Printout, was marked for 23 identification.) 24 - - -</p>

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1 BY MR PIFKO:
2 Q. That's another tab from the
3 spreadsheet.
4 Do you recognize that
5 document?
6 A. Again, it's a little bit
7 small here to read, but it appears to
8 contain customer names, sales assignments
9 and diversion control team member names.
10 Q. With these three tabs from
11 that document in front of you, is there
12 anything you wish to change about your
13 prior testimony concerning that document?
14 MR. NICHOLAS: Why don't you
15 ask him about the other document
16 you showed him?
17 MR. CLUFF: That's not the
18 exhibit.
19 MR. NICHOLAS: I understand.
20 THE WITNESS: So, again, I
21 want to be perfectly clear, it's a
22 little difficult, with all of
23 these documents, to ascertain
24 from, you know, the e-mail where

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1 it has various attachments and
2 tabs unless they are all together.
3 But I would represent that
4 we say there's approximately 3,000
5 accounts, we have the precise
6 number here, where we're lacking
7 documentation.
8 And if this list represents
9 about 3,000, then I would
10 represent that that is accurate to
11 this number.
12 BY MR PIFKO:
13 Q. Okay. Thank you.
14 MR. NICHOLAS: Can you ask
15 him to hold that list up in
16 contrast to the one --
17 MR. PIFKO: I'm not going to
18 ask him --
19 MR. NICHOLAS: -- you
20 mistakenly held up.
21 MR PIFKO: You're trying to
22 testify for him, stop.
23 MR. NICHOLAS: No, you said
24 you wanted --

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1 MR PIFKO: Stop.
2 MR. NICHOLAS: You said you
3 wanted --
4 MR. PIFKO: I asked him if
5 there was anything he wanted to
6 do, and now you're trying to tell
7 him what to do. Stop.
8 MR. NICHOLAS: You said you
9 wanted to correct the record.
10 MR. PIFKO: I asked him -- I
11 gave him a full opportunity.
12 MR. NICHOLAS: You said you
13 wanted to correct it.
14 MR. PIFKO: I'm moving on.
15 MR. NICHOLAS: Do you want
16 to correct it or not? Ask him to
17 hold them both up.
18 MR PIFKO: You're coaching
19 him. No.
20 MR. NICHOLAS: I'm not
21 coaching him. I'm asking him to
22 hold -- you asked him to hold up
23 something and I'm asking him to
24 hold up something.

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1 MR PIFKO: You need to stop
2 talking. Seriously, we're going
3 to go to court on you.
4 MR. NICHOLAS: If we go to
5 court on this, that's probably
6 something you want to do.
7 MR. PIFKO: I feel fine.
8 I've done nothing wrong.
9 MR. NICHOLAS: Doubt it.
10 - - -
11 (Whereupon,
12 AmerisourceBergen-May Exhibit-19,
13 ABDCMDL 00159841, was marked for
14 identification.)
15 - - -
16 MR PIFKO: I want to make
17 one other comment about that
18 document. It also had hidden tabs
19 that our review team had to --
20 hidden columns in the spreadsheet
21 that our review team had to
22 unhide.
23 So your production of the
24 document was not a fair production

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1 that allowed us to review it in a
2 proper way.
3 MR. MAHADY: It was produced
4 in a native format.
5 MR. NICHOLAS: It was
6 produced --
7 BY MR. PIFKO:
8 Q. I'm handing you --
9 MR. NICHOLAS: -- the way it
10 was supposed to be produced, which
11 was in native format.
12 BY MR PIFKO:
13 Q. I've handed you what has
14 been marked as Exhibit-19. It's a
15 PowerPoint presentation marked ABDCMDL
16 00159841. I'll represent to you that the
17 metadata from that document states that
18 you are the custodian. It's a file
19 called CSRA Diversion Control General
20 Awareness Training, Draft. And the
21 document is dated April 20th, 2016.
22 Please review that and let
23 me know when you're done.
24 A. Okay.

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1 Q. Have you seen this document
2 before?
3 A. Yes.
4 Q. This is a presentation that
5 you made?
6 A. Yes.
7 Q. What was this for?
8 A. To the best of my
9 recollection, this was to our compliance
10 managers during our annual training
11 process for compliance managers. And we
12 held this training conference at our
13 corporate headquarters.
14 Q. And this is -- do you agree
15 that this presentation was made in April
16 2016, as it states here?
17 A. Correct.
18 I guess the only caveat here
19 is, you mentioned that it said draft.
20 There may have been a final copy of this.
21 But, generally, that would represent
22 here, in draft form, at least, what I
23 presented.
24 Q. Do you recall making this

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1 presentation?
2 A. I do generally recall.
3 Q. I want to direct your
4 attention to Page 4, which is also Slide
5 4.
6 A. Yes.
7 Q. Can you tell me what this
8 slide reflects?
9 A. Again, this was an effort by
10 me to sensitize the compliance managers
11 to certain data relative to the opioid
12 problem.
13 Q. Why did you want to
14 sensitize them to this data?
15 A. General awareness training
16 for diversion.
17 Q. Why would you want to make
18 them aware of this information?
19 MR. NICHOLAS: Object to the
20 form. Asked and answered.
21 THE WITNESS: Again, it was
22 a diverse group of people, and I'm
23 not sure of everyone's level of
24 knowledge relative to some of the

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1 issue, in a very general way.
2 So it's just my attempt to
3 provide information, share
4 information and educate and inform
5 people.
6 BY MR PIFKO:
7 Q. As the head of the diversion
8 control division, you wanted other people
9 in the company to be aware of the
10 diversion and prescription drug abuse
11 statistics that are provided here --
12 MR. NICHOLAS: Objection.
13 BY MR. PIFKO:
14 Q. -- is that correct?
15 MR. NICHOLAS: Object to the
16 form of that question.
17 THE WITNESS: Again, my
18 response is the entire
19 presentation was intended to --
20 again, General Awareness was the
21 title.
22 And not knowing everyone's
23 level of information relative to
24 diversion control, and even some

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1 of the things that we do in the
 2 diversion control team versus
 3 maybe some of their
 4 responsibilities at the
 5 distribution center, it's an
 6 effort to educate and inform
 7 everybody.
 8 BY MR PIFKO:
 9 Q. What does this timeline
 10 reflect on this slide?
 11 MR. NICHOLAS: Object to the
 12 form.
 13 BY MR PIFKO:
 14 Q. While you're reviewing it,
 15 on the left of the timeline, it says,
 16 1983, Vicodin becomes available as a
 17 generic.
 18 1986, published paper
 19 concludes that opioid pain killers could
 20 be prescribed safely on a long-term
 21 basis.
 22 1995, OxyContin receives
 23 approval from FDA. American Pain Society
 24 introduces a campaign entitled, quote,

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1 Pain is the Fifth Vital Sign, end quote.
 2 1996, Purdue Pharma begins
 3 multiyear educational programs promoting
 4 long-term use of opioid pain killers.
 5 2000s, physicians expand
 6 their treatment of pain through use of
 7 the growing number of approved
 8 prescription opioids. Prescription pain
 9 killers flood the market.
 10 2014, four times annual
 11 increase in prescriptions from 1999 to
 12 2014. Five times annual increase in
 13 overdose deaths related to opioids.
 14 Did I read that correctly?
 15 A. You did.
 16 Q. What is this timeline
 17 intended to reflect?
 18 MR. NICHOLAS: Object to the
 19 form. You just read it.
 20 THE WITNESS: So this
 21 timeline -- I can't tell you the
 22 source. I acquired it from
 23 somewhere, some sort of public
 24 document. And I inserted it in

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1 here as part of the training
 2 program.
 3 BY MR PIFKO:
 4 Q. What did you want people to
 5 see when you -- by putting this in here?
 6 What were you trying to communicate?
 7 MR. NICHOLAS: Object to the
 8 form. You just read it.
 9 THE WITNESS: The timeline
 10 represents certain information
 11 relative to the opioid
 12 prescribing, with dates associated
 13 with it.
 14 And, again, other than it
 15 offering background and a timeline
 16 and information relative to dates,
 17 it was intended to be educational.
 18 That was my intent.
 19 BY MR PIFKO:
 20 Q. Is it intended to educate
 21 people about the relevant milestones with
 22 respect to the opioid crisis, agree?
 23 MR. NICHOLAS: Objection to
 24 the form of the question.

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1 THE WITNESS: And, again,
 2 going back to my related response,
 3 all of this was intended to be
 4 general training and information
 5 purposes for our compliance
 6 managers around the issue of
 7 opioids.
 8 BY MR PIFKO:
 9 Q. Right. And this timeline --
 10 by showing this timeline, you were
 11 intending to educate people of the
 12 relevant milestones with respect to the
 13 opioid crisis; is that correct?
 14 MR. NICHOLAS: Object to the
 15 form of the question. Asked and
 16 answered at least twice.
 17 THE WITNESS: Again, it
 18 was -- I had no specific goal
 19 relative to the content or the
 20 dates. It was part of general
 21 awareness training, sharing that
 22 information that I saw, as well as
 23 all this other information as part
 24 of the general awareness training.

<p style="text-align: right;">Page 334</p> <p>1 I did not have a specific 2 objective in mind with sharing 3 this particular part of the 4 training, beyond my general 5 awareness and education intent. 6 BY MR PIFKO: 7 Q. Let's go to the next page, 8 Page 5. 9 This slide says, Causes, 10 with a subheading, Driving factors behind 11 diversion and prescription drug abuse. 12 Can you tell me what's 13 reflected here? 14 A. Again, information that I've 15 gathered through my own experience and 16 exposure to various data and stories and 17 content. I put together this general 18 PowerPoint bullet/slide. 19 Q. And it's your view that 20 these are driving factors behind 21 diversion and prescription drug abuse; is 22 that correct? 23 MR. NICHOLAS: Object to the 24 form.</p>	<p style="text-align: right;">Page 336</p> <p>1 Q. What's reflected here? 2 MR. NICHOLAS: Object to the 3 form. 4 THE WITNESS: I would rely 5 upon the description here. Again, 6 this was -- this was content, 7 public content, that I took from 8 somewhere and put it on this 9 slide. 10 I see 2016 PDMP report on 11 the bottom. I'm not sure why it 12 would say that if they're talking 13 about -- if it purports to be 14 national rates. I'm not sure, 15 quite frankly. 16 I would rely upon what's on 17 there as -- 18 BY MR PIFKO: 19 Q. This chart shows sales of 20 opioids -- what does it show, do you 21 know? 22 MR. NICHOLAS: Object to the 23 form. And I'll object to the 24 scope of this line of questioning</p>
<p style="text-align: right;">Page 335</p> <p>1 THE WITNESS: These are some 2 of the factors behind diversion 3 and prescription drug abuse. 4 BY MR PIFKO: 5 Q. You don't have any actions 6 committed by distributors here; is that 7 correct? 8 MR. NICHOLAS: Object to the 9 form. 10 But go ahead. 11 THE WITNESS: I do not. 12 BY MR PIFKO: 13 Q. Let's go to the next slide. 14 It says, Trends, diversion 15 and substance abuse statistics. 16 Do you see that? 17 A. I do. 18 Q. And then it's got a chart, 19 Prescription painkiller sales and 20 age-adjusted rates for drug poisoning 21 deaths by drug -- by type of drug, United 22 States, 2000 to 2014. 23 Do you see that? 24 A. I do.</p>	<p style="text-align: right;">Page 337</p> <p>1 in general. 2 THE WITNESS: Again, I'm 3 just looking at the title, 4 Prescription Painkiller Sales and 5 Age-Adjusted Rates For Drug 6 Poisoning Tests By Type of Drug. 7 But it doesn't really give 8 you by type of drug, other than 9 saying opioid analgesics versus 10 heroin deaths, and then sales. 11 So, again, it's a little bit 12 hard to decipher at this point. I 13 probably, at the time of the 14 presentation, was more familiar 15 with where it was derived from and 16 could speak to it. But at this 17 point -- 18 BY MR PIFKO: 19 Q. Let's go to the next page, 20 Slide 7. 21 The slide says, What is 22 diversion control. 23 Correct? 24 A. Yes.</p>

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1 Q. And the speaker notes on the
2 bottom, it says, So what is diversion?
3 In my own words, diversion is any
4 activity, including negligence, which
5 results in a prescription drug being
6 removed from its intended, legitimate
7 medical use. Diversion can take place
8 anywhere along the closed system path,
9 from manufacturer, to distributor,
10 prescriber, dispenser and end user.
11 Do you see that?
12 A. I do.
13 Q. Do you agree with that?
14 MR. NICHOLAS: Object to the
15 form.
16 THE WITNESS: Again --
17 MR. NICHOLAS: Object to the
18 scope as well.
19 Go ahead.
20 THE WITNESS: I do agree
21 with it, in terms of it -- of the
22 definition.
23 But I do want to point out
24 it's in my own words. You know,

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1 words, it should be. It says "in
2 my own words" there, but it's my
3 own words.
4 So this was my, kind of
5 off-the-top-of-my-head definition.
6 BY MR PIFKO:
7 Q. But you believe this to be
8 true?
9 MR. NICHOLAS: Object to the
10 form. Object to the scope. Asked
11 and answered.
12 THE WITNESS: I generally
13 believe this to be true, yes.
14 BY MR PIFKO:
15 Q. Let's go to the next page.
16 The heading of the slide is,
17 Commonly Diverted Drugs.
18 Do you see that?
19 A. I do.
20 Q. And it says, Misuse of pain
21 killers represents three-quarters of
22 overall prescription drug abuse.
23 Do you see that?
24 A. I do.

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1 Q. Do you agree with that
2 statement?
3 MR. NICHOLAS: Object to the
4 form.
5 THE WITNESS: I agree to
6 that statement at that time and,
7 presumably, I did the -- my own
8 due diligence before I included a
9 statement like that at that time.
10 BY MR PIFKO:
11 Q. The speaker notes below say,
12 And what's being diverted? The biggest
13 threat for diversion continues to be
14 opioids. Unfortunately, these drugs have
15 very addictive qualities. So it happens
16 frequently that you will see someone who
17 was prescribed hydrocodone following an
18 injury or medical intervention for
19 legitimate medical purposes, but then
20 continues to abuse and abuse the drug --
21 use and abuse the drug long after the
22 legitimate medical need has passed.
23 Do you see that?
24 A. Yes.

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1 Q. Did I read that correctly?
2 A. Yes. I used that more than
3 once, that example.
4 Q. I was going to say, we saw
5 that in another one of your presentations
6 earlier, right?
7 A. Yes.
8 Q. And you agree with that
9 statement?
10 MR. NICHOLAS: Object to the
11 form.
12 THE WITNESS: I generally
13 agree that could be one example of
14 how abuse could take place.
15 - - -
16 (Whereupon,
17 AmerisourceBergen-May Exhibit-20,
18 ABDCMDL 00142341-345, was marked
19 for identification.)
20 - - -
21 BY MR PIFKO:
22 Q. I'm handing you what is
23 marked as Exhibit-20.
24 Take a moment to review that

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1 and let me know when you're done.
2 For the record, Exhibit-20
3 is Bates labeled ABDCMDL 00142341 through
4 2345.
5 MR. NICHOLAS: I'm going to
6 interpose an objection to the
7 questioning on this document on
8 two grounds, before we proceed.
9 The first is that it appears
10 to pertain to a pharmacy and
11 information that is not contained
12 in the Track 1 jurisdictions. It
13 looks like it's a Pennsylvania
14 situation.
15 And, secondly, which takes
16 us out of his, I believe, the
17 30(b)(6) testimony. And to the
18 extent you're asking him
19 individual questions, he's not on
20 large portions of this document.
21 He's not copied on large portions
22 of this document.
23 So for those two reasons, I
24 object to the use of the document.

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1 BY MR. PIFKO:
2 Q. Are you done reviewing it?
3 A. Yes, yes.
4 Q. Do you know what this
5 document is?
6 A. It's an e-mail string.
7 Q. I just wanted to ask you a
8 simple question about this document.
9 If you'd go to the second
10 page, ABDCMDL 00142342.
11 Are you there?
12 A. Yes.
13 Q. About a third of the way
14 down, there's an e-mail from Eric
15 Cherveney, dated January 17th, 2017, at
16 6:02 p.m.
17 Do you see that?
18 A. Yes.
19 Q. He says, I don't see the
20 need to order a dispensing report here
21 due to their extreme low volume and high
22 controls. They're clearly using us as
23 secondary for controls.
24 Do you see that?

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1 A. I do.
2 Q. Do you have an understanding
3 about what's being discussed there?
4 MR. NICHOLAS: Objection for
5 the reasons I stated in my prior
6 objection.
7 THE WITNESS: So I'm happy
8 to talk about this a little bit.
9 It's always a little bit difficult
10 when addressing specific
11 customers. But I think I can talk
12 a little bit about the theme here.
13 BY MR. PIFKO:
14 Q. And that's what I'm trying
15 to get at.
16 A. And so, I guess, to this
17 commentary here, one of the challenges
18 that we face, as a wholesale distributor,
19 is the lack of visibility, in terms of
20 customers who are utilizing two, three,
21 four different distributors.
22 And there are times when we
23 can see, simply from the data, and
24 it's -- again, I'm going to speak

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1 generally here, because you can't even
2 read the volumes on this first page. But
3 simply from the data, it becomes clear
4 that the customer is using us for the
5 purchase of controls versus their total
6 purchasing, which may be a perfectly
7 legitimate reason by the pharmacy. If
8 I'm an independent pharmacist and I can
9 buy and shop among three or four
10 distributors and get controls at certain
11 prices, then they're going to do that.
12 That's perfectly legitimate.
13 Sometimes it's not
14 legitimate. Sometimes we're being used
15 to supplement other purchasing where a
16 pharmacy may have a distributor that is
17 holding them to certain levels.
18 And so that's a general
19 challenge that we face as a wholesale
20 distributor. And so what is the -- how
21 do we handle those situations? And,
22 again, in speaking generally, when the
23 data is very apparent that the customer
24 is using us just to purchase controls,

<p style="text-align: right;">Page 346</p> <p>1 well, we may just make the decision, hey, 2 you know, we're not going to assume all 3 that risk, even though you may have a 4 legitimate reason for doing so, it 5 doesn't make sense for us to assume all 6 that risk. So you know what, we're just 7 going to terminate the relationship with 8 you.</p> <p>9 And we would just send them 10 a letter to say that, you know -- and we 11 would provide them that reason, that 12 we're not going to assume risk on a 13 secondary basis here.</p> <p>14 And so that's a general 15 theme. And without seeing, before and 16 after, what occurred here, that's my 17 general theme explanation.</p> <p>18 Q. That's helpful. Thank you. 19 That's what I was getting at.</p> <p>20 So I understand a little bit 21 more, when you talk about this risk, I 22 completely understand that you don't know 23 for sure what the reason is, there could 24 be a legitimate reason.</p>	<p style="text-align: right;">Page 348</p> <p>1 a case-by-case basis, not knowing 2 the complete context there.</p> <p>3 And when the data is evident 4 to us that it's a secondary 5 situation and there's risk 6 involved relative to the 7 customer's activity, we may make 8 the decision we're not even going 9 to pursue the relationship any 10 longer, for the sheer fact that 11 there's risk involved with the 12 customer. And we would make that 13 decision.</p> <p>14 I'm not sure that that 15 ultimately was the case here.</p> <p>16 That's --</p> <p>17 BY MR PIFKO: 18 Q. We can put that aside. 19 When you talk about that 20 risk, what do you mean? What kind of 21 risk do you mean?</p> <p>22 MR. NICHOLAS: Object to the 23 form. And scope. 24 THE WITNESS: So the data,</p>
<p style="text-align: right;">Page 347</p> <p>1 But the risk is that there's 2 a potential illegitimate reason that 3 maybe they're -- someone else had a 4 threshold for them and they've gotten to 5 it, and they're coming to you to get 6 more.</p> <p>7 And that's the concern that 8 potentially that could be happening; is 9 that correct?</p> <p>10 MR. NICHOLAS: Object to the 11 form.</p> <p>12 THE WITNESS: Yes. There is 13 a concern that they could be 14 getting controls from multiple 15 sources.</p> <p>16 BY MR PIFKO: 17 Q. And as of 2017, when this 18 e-mail was written, that's not a risk 19 that the company wanted to take on, like 20 you said?</p> <p>21 MR. NICHOLAS: Object to the 22 form.</p> <p>23 THE WITNESS: Again, we 24 handle these similar scenarios on</p>	<p style="text-align: right;">Page 349</p> <p>1 in and of itself, presents a red 2 flag. Because you have a 3 customer, like in this case, has a 4 high percentage of controls. 5 That's risk. And that -- because 6 of that risk, we may make that 7 decision.</p> <p>8 BY MR PIFKO: 9 Q. When you say "red flag," 10 that's a red flag for diversion, like we 11 saw in the presentation?</p> <p>12 MR. NICHOLAS: Object to the 13 form.</p> <p>14 THE WITNESS: There are 15 several red flags that we monitor 16 for, that we investigate. I don't 17 believe I said for diversion, I 18 believe I said there's just red 19 flags relative to their ordering 20 activity that we investigate, if I 21 recall correctly.</p> <p>22 BY MR PIFKO: 23 Q. But I was just trying to 24 understand, is a red flag indicia of what</p>

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1 something that gives rise -- your
2 division is diversion control?
3 MR. NICHOLAS: Hold on. Is
4 that a question? It isn't a
5 question yet.
6 BY MR PIFKO:
7 Q. My question is, what is it a
8 red flag for? And you were about to
9 answer it.
10 MR. NICHOLAS: Object to the
11 form.
12 THE WITNESS: So, again,
13 it's a -- we establish red flag
14 analytics around the ordering
15 behavior of our customers. And
16 I've identified some of those to
17 you.
18 Does a red flag equate with
19 diversion? No. A red flag is
20 what it is, suspect ordering
21 behavior that we need to review,
22 investigate, understand, mitigate.
23 MR PIFKO: We can take a
24 break.

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1 VIDEO TECHNICIAN: Going off
2 the record. 4:35 p.m.
3 - - -
4 (Whereupon, a brief recess
5 was taken.)
6 - - -
7 VIDEO TECHNICIAN: We're
8 back on record at 4:48 p.m.
9 BY MR PIFKO:
10 Q. Can you get Exhibits-16 and
11 18 and 17 and 13 in front of you again?
12 - - -
13 (Whereupon, a discussion off
14 the record occurred.)
15 - - -
16 BY MR. PIFKO:
17 Q. Specifically, I want you to
18 look at 13.
19 Can you tell me what 13 is?
20 And you can refer, remember, this is an
21 attachment to Exhibit-12, if you want to
22 look at the one-page e-mail.
23 So there's a lot of numbers
24 in front of you. Take your time to get

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1 what you need to look at this.
2 MR. NICHOLAS: What are you
3 asking him?
4 MR PIFKO: I'll get there.
5 THE WITNESS: Okay. I have
6 12 and I have 13.
7 BY MR PIFKO:
8 Q. And I want you to have 16,
9 18 and 17 in front of you as well.
10 A. 16, 18, and 17, okay.
11 Things aren't very well organized over
12 here, so.
13 Q. Same on my side.
14 MR. NICHOLAS: Is that what
15 you want, 16, 17, 18 and 13?
16 MR PIFKO: He needs to look
17 at the official copies.
18 MR. NICHOLAS: Then he has
19 to find them. It's these. 16,
20 17, 18, 13.
21 THE WITNESS: So do I have
22 them all together, then?
23 So I have 12, 13, 16, 17 and
24 18.

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1 BY MR PIFKO:
2 Q. Do you have -- it looks
3 like, in front of you, you just have two
4 documents.
5 You've got to use your
6 copies. You've got to use the official
7 exhibits.
8 A. I don't have them.
9 Q. They've got to be there
10 somewhere. They're not those. So you
11 can put them -- I'm not talking about --
12 maybe they're in that stack there.
13 A. No, I went through this
14 already.
15 MR. NICHOLAS: I don't care
16 if he uses these.
17 MR PIFKO: It's concerning
18 to me that -- there they are.
19 They are in front of you, Bob.
20 Stolen exhibits.
21 - - -
22 (Whereupon, a discussion off
23 the record occurred.)
24 - - -

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1 THE WITNESS: I have 12 and
2 13 now. 18 and 17. So,
3 apparently, 16 I'm missing now.
4 BY MR PIFKO:
5 Q. All right. You've got
6 everything in front of you now?
7 A. I do, yes.
8 Q. So we have the e-mail, which
9 is 12, and then we have the attachment,
10 which is Exhibit-16, 18, 17 and 13.
11 So 16, 18, 17 and 13, I
12 believe, are the tabs of the attachment
13 to Exhibit-12, which was the document
14 entitled, Copy of 590 Validation Master
15 Spreadsheet, 7/28/16, okay?
16 A. Yes.
17 Q. So 13, can you put that in
18 front of you?
19 A. 13 is in front of me.
20 Q. Do you know what that is?
21 MR. NICHOLAS: Object to the
22 form.
23 THE WITNESS: So, again,
24 here is a little bit of my

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1 challenge now. And I'll talk
2 through this a little bit.
3 I have the paper e-mail in
4 front of me. The paper e-mail
5 says there's an attachment. These
6 four documents, 18, 17, 16 and 13,
7 purport to be the attachment,
8 except with different tabs.
9 Am I --
10 BY MR. PIFKO:
11 Q. They are.
12 A. Do we all agree on that?
13 Q. You have the Bates label on
14 the top of your spreadsheet printouts.
15 And you have the tab name on the bottom
16 of those. 16, 18, 17 and 13.
17 A. So because this is the paper
18 copy, I am going to assume that these are
19 the tabs, because I have no --
20 Q. And they are. That's the
21 printouts of the tabs.
22 MR. NICHOLAS: Object to the
23 form. He's stated his assumption.
24 THE WITNESS: And so -- now

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1 that as -- we assume that's the
2 tab, then I acknowledge that these
3 are the separate tabs within the
4 attachment.
5 And, again, I've looked at
6 these documents before. So now
7 we've established that.
8 What's the question, please?
9 BY MR PIFKO:
10 Q. So I want you to tell me
11 what Exhibit-13 is.
12 MR. NICHOLAS: If he knows.
13 THE WITNESS: So 13 is one
14 of the tabs which contains
15 numerous pages of DEA registration
16 numbers, as well as sales
17 assignments.
18 BY MR PIFKO:
19 Q. Does Exhibit-13 have a
20 column with sequential numbering?
21 MR. NICHOLAS: Object to the
22 form.
23 THE WITNESS: There is page
24 numbers.

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1 BY MR PIFKO:
2 Q. Okay. Don't worry about it.
3 Do you know how many
4 customers AmerisourceBergen had as of
5 July 7th, 2017?
6 A. In our entire customer base?
7 Q. Yes.
8 A. No, I don't know
9 definitively how many customers we had.
10 Q. Can you estimate?
11 MR. NICHOLAS: Object to the
12 form. I'll just caution the
13 witness not to speculate. Also
14 outside the scope.
15 THE WITNESS: Generally,
16 ballpark, I believe we had around
17 21,000 DEA registrations who were
18 purchasing controls. So that's a
19 very general ballpark number.
20 BY MR PIFKO:
21 Q. Thank you.
22 And so if we go back to the
23 exhibits in front of you -- not that one.
24 Keep going.

<p style="text-align: right;">Page 358</p> <p>1 A. 18?</p> <p>2 Q. I believe it's the summary</p> <p>3 one, right there. That one. Yeah.</p> <p>4 Which one is that?</p> <p>5 A. This is 16.</p> <p>6 Q. Okay. And that reflects the</p> <p>7 number of accounts with 590 deficiency,</p> <p>8 correct?</p> <p>9 MR. NICHOLAS: Object to the</p> <p>10 form.</p> <p>11 THE WITNESS: This document</p> <p>12 represents those number of</p> <p>13 accounts where we did not have due</p> <p>14 diligence documentation on file.</p> <p>15 BY MR PIFKO:</p> <p>16 Q. And my question is, what</p> <p>17 percentage do you believe that is of your</p> <p>18 total accounts at the time that this was</p> <p>19 printed in July 7th, 2017?</p> <p>20 MR. NICHOLAS: Object to the</p> <p>21 form. Outside the scope.</p> <p>22 THE WITNESS: Generally</p> <p>23 speaking, really, and this is a</p> <p>24 very ballpark figure, 13, 14</p>	<p style="text-align: right;">Page 360</p> <p>1 concluded at 4:57 p.m.)</p> <p>2 - - -</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 359</p> <p>1 percent.</p> <p>2 MR PIFKO: I don't know if</p> <p>3 AmerisourceBergen's counsel has</p> <p>4 any questions for you, but if they</p> <p>5 do, I may have some additional</p> <p>6 questions for you.</p> <p>7 And if additional documents</p> <p>8 may be produced in this case, I</p> <p>9 may seek to call you back, at</p> <p>10 which time I would confer with</p> <p>11 AmerisourceBergen's counsel.</p> <p>12 Subject to that, I don't</p> <p>13 have any further questions of you</p> <p>14 at this time.</p> <p>15 MR. NICHOLAS: I have no</p> <p>16 questions at this time. Thank</p> <p>17 you.</p> <p>18 Thank you, Mr. May.</p> <p>19 VIDEO TECHNICIAN: This ends</p> <p>20 today's deposition. We're going</p> <p>21 off the record. The time is 4:57</p> <p>22 p.m.</p> <p>23 - - -</p> <p>24 (Whereupon, the deposition</p>	<p style="text-align: right;">Page 361</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3</p> <p>4 I HEREBY CERTIFY that the</p> <p>5 witness was duly sworn by me and that the</p> <p>6 deposition is a true record of the</p> <p>7 testimony given by the witness.</p> <p>8</p> <p>9</p> <p>10</p> <p>11 Amanda Maslinsky-Miller</p> <p>12 Certified Realtime Reporter</p> <p>13 Dated: August 7, 2018</p> <p>14</p> <p>15</p> <p>16</p> <p>17 (The foregoing certification</p> <p>18 of this transcript does not apply to any</p> <p>19 reproduction of the same by any means,</p> <p>20 unless under the direct control and/or</p> <p>21 supervision of the certifying reporter.)</p> <p>22</p> <p>23</p> <p>24</p>

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INSTRUCTIONS TO WITNESS

1
2
3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.
8 After doing so, please sign
9 the errata sheet and date it.
10 You are signing same subject
11 to the changes you have noted on the
12 errata sheet, which will be attached to
13 your deposition.
14 It is imperative that you
15 return the original errata sheet to the
16 deposing attorney within thirty (30) days
17 of receipt of the deposition transcript
18 by you. If you fail to do so, the
19 deposition transcript may be deemed to be
20 accurate and may be used in court.
21
22
23
24

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E R R A T A
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4 **PAGE LINE CHANGE**
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ACKNOWLEDGMENT OF DEPONENT

1
2
3 I, _____, do
4 hereby certify that I have read the
5 foregoing pages, 1 - 360, and that the
6 same is a correct transcription of the
7 answers given by me to the questions
8 therein propounded, except for the
9 corrections or changes in form or
10 substance, if any, noted in the attached
11 Errata Sheet.
12
13 **DAVID MAY** **DATE** _____
14
15 Subscribed and sworn
16 to before me this
17 _____ day of _____, 20____.
18 My commission expires: _____
19
20 _____
21 Notary Public
22
23
24

Page 365

LAWYER'S NOTES

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